

United States
Circuit Court of Appeals
For the Ninth Circuit.

T. J. SMITH,

Appellant,

VS.


L. M. WHITE, et al.,

Appellees.

Transcript of Record

Upon Appeal from the District Court of the United States
for the District of Arizona

FILED
PAUL P. JONES
CLERK



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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ATTORNEYS OF RECORD

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Phoenix, Arizona,

Attorneys for Appellant,

MESSRS. KNAPP, BOYLE, BILBY &
THOMPSON,

ARTHUR HENDERSON, ESQ.

Valley National Building,
Tucson, Arizona.

Attorneys for Appellee,

L. M. White, Objecting Creditor. [3*]

BANKRUPTCY DOCKET

Cause No. B-525 Tucson

In the Matter of
T. J. SMITH, Debtor.

Section under which filed: Section 75

Type of case: Voluntary

Occupation: Farmer

Type of debtor: Ind.

Residence: Box 97, Maranna, Ariz.

Referee and Trustee—Conciliation Comr.: C. R.
McFall, Trustee.

Attorneys—John W. Corbin & M. C. Burk,
Phoenix, Arizona.

CLERK'S DOCKET ENTRIES

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Mar. 14—File debtor's petition and schedules in
duplicate.

Mar. 24—Enter and file Order approving debtor's
petition and referring matter to Concilia-
tion Comr.

Mar. 24—Forward copy of petition and schedules
and copy of Order approving debtor's
petition to conciliation comr.

Mar. 25—Forward notice to Gen'l Accounting Office
of debts due U. S.

Mar. 29—File Conciliation Comr's. Notice of First
Meeting of Creditors on 4/9/47 at
Tucson.

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- Apr. 18—File report and certificate to the Judge by the conciliation comr.
- Apr. 18—File conciliation Com's. record of proceedings.
- Apr. 22—Enter and file order to show cause why objection to jurisdiction of this court should not be sustained and dismissed upon the ground that said petitioner is not a farmer within the meaning of Section 75 of the Bankruptcy Act, for hearing on May 14, 1947.
- Apr. 22—Forward copy of order to Conciliation Commissioner.
- Apr. 23—Issue notice to all counsel of record, debtor, creditors and interested parties of Order to Show Cause, dated 4/22/47.
- May 14—Order to Show Cause, etc., on for hearing this date. Debtor, T. J. Smith present in person with his counsel, John Corbin; Ben C. Hill and Ashby Lohse present for creditor, Wid Coffin. No other appearance. Hearing now had on said Order to Show Cause. Debtor, T. J. Smith, sworn and examined for the information of the Court. Matter submitted and taken under advisement. Order counsel for debtor to file memorandum, allow ten (10) days within which to file said memo.
- May 15—Order that Knapp, Boyle, Bilby and Thompson, attorneys for L. M. White, be given five (5) days after filing of debtor's memorandum of authorities within which to file a memorandum of authorities op-

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posing contentions made by the debtor in the hearing of May 14th and further permitting the said attorneys to file a transcript of the examination of the debtor before the Conciliation Commissioner on April 9th and April 15th.

May 27—File Debtor's Brief.

June 2—File Memorandum of Authorities of Knapp, Boyle, Bilby and Thompson, attorneys for L. M. White, in opposition to contentions made by debtor, together with Transcript of Proceedings hearings April 9 and April 15, 1947. [4]

June 4—It appearing to the Court that petitioner T. J. Smith in his answer to show cause why petition should not be dismissed failed to show cause why the petition should not be dismissed on the grounds and for the reason he is not a farmer within the meaning of Section 75 of the Bankruptcy Act, Order that the petition be and is dismissed.

June 4—Enter order of June 4, 1947, in Bankruptcy Docket.

June 4—Issue notice to Conciliation Commissioner.

June 4—File Statistical Report on Form J. S. 23 in triplicate.

June 5—Issue notice to counsel, debtor and all interested parties of order of 6/4/47.

July 2—File Notice of Appeal, of Debtor. (\$5.00)

July 2—Issue copies of Notice of Appeal to counsel, creditors and interested parties.

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July 28—File Appellant's Designation of Portion of Record, etc. on Appeal.

July 28—File Appeal Bond and Receipt.

July 28—File Reporter's Transcript of Testimony in duplicate.

July 28—Receive \$250.00 cost bond on appeal and deposit in R. F.

July 30—Forward copies of Designation of Portion of Record, etc., to counsel, creditors and interested parties.

Aug. 5—Order grant 20 days extension of time in which to file record on appeal in CCA.

Aug. 7—File Creditor's Designation of Portion of Record, Proceedings and Evidence to be Contained in the Record on Appeal to the Circuit Court of Appeals.

Aug. 19—Prepare and forward transcript of record on appeal to CCA (10 pages at 40c, 70 pages at 10c, \$11.00).

Aug. 19—Enter clerk's miscellaneous fee for mailing 4 sets of notices to 25 creditors on following dates: Apr. 23, June 5, July 2 and July 30, 1947—(80 notices at 10c, 20 notices at 5c, \$9.00). [5]

In the District Court of the United States for the
Southern District of Arizona, Tucson Division.

No. B-525-Tucson

In the Matter of
T. J. SMITH, Debtor.

DEBTOR'S PETITION IN PROCEEDINGS
UNDER SECTION 75 OF THE BANK-
RUPTCY ACT

Form 63

To the Honorable Howard Speakman, Judge of the
District Court of the United States for the
Southern District of Arizona.

The Petition of T. J. Smith, Residing at No.....
Street, in the.....County of Pima, State of
Arizona, respectfully represents:

That he is primarily bona fide personally engaged
in producing products of the soil (or the principal
part of whose income is derived from any one or
more of the foregoing operations) as follows:.....
that such operations occur in the county (or coun-
ties) of Pima, within said judicial district; that he
is insolvent (or unable to meet his debts as they
mature); and that he desires to effect a composi-
tion or extension of time to pay his debts under
section 75 of the Bankruptcy Act.

That the schedule hereto annexed, marked "A,"
and verified by your petitioner's oath, contains a
full and true statement of all his debts, and (so far
as it is possible to ascertain) the names and places

of residence of his creditors, and such further statements concerning said debts as are required by the provisions of said Act.

That the schedule hereto annexed, marked "B," and verified by your petitioner's oath, contains an accurate inventory of all his property, both real and personal, and such further statements concerning said property as are required by the provisions of said Act.

Wherefore your petitioner prays that his petition may be approved by the court and proceedings had in accordance with the provisions of said section.

JOHN W. CORBIN and
M. C. BURK,
Attorney for Petitioner.

/s/ T. J. SMITH,
Petitioner.

United States of America, District of Arizona,
State of Arizona, County of Maricopa—ss.

I, T. J. Smith, the petitioning debtor mentioned and described in the foregoing petition, do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information, and belief.

/s/ T. J. SMITH,
Petitioner.

Subscribed and sworn to before me this 12th day
of March, A.D., 1947.

[Seal] /s/ JOHN W. CORBIN,
Notary Public.

My commission expires: October 24, 1949. [6]

Summary of Debts and Assets

(From the Statements of the Debtor in Schedules A and B)

		Dollars	Cents
Schedule A. 1—a	Wages.....	\$	215.00
Schedule A. 1—b (1)	Taxes due United States.....		15,909.44
Schedule A. 1—b (2)	Taxes due States.....		
Schedule A. 1—b (3)	Taxes due counties, districts and municipalities.....		357.00
Schedule A. 1—c (1)	Debts due any person, including the United States, having priority by laws of the United States.....		
Schedule A. 1—c (2)	Rent having priority.....		
Schedule A. 2	Secured claims.....		24,850.10
Schedule A. 3	Unsecured claims.....		118,358.87
Schedule A. 4	Notes and bills which ought to be paid by other parties thereto.....		
Schedule A. 5	Accommodation paper.....		
Schedule A, total			<u>160,190.41</u>
Schedule B. 1	Real estate.....		90,149.90
Schedule B. 2—a	Cash on hand.....		500.00
Schedule B. 2—b	Negotiable and non-negotiable instruments and securities.....		
Schedule B. 2—c	Stocks in trade.....		
Schedule B. 2—d	Household goods.....		7,000.00
Schedule B. 2—e	Books, prints and pictures.....		1,000.00
Schedule B. 2—f	Horses, cows and other animals.....		700.00
Schedule B. 2—g	Automobiles and other vehicles.....		1,200.00
Schedule B. 2—h	Farming stock and implements.....		12,000.00
Schedule B. 2—i	Shipping and shares in vessels.....		
Schedule B. 2—j	Machinery, fixtures, and tools.....		35,000.00
Schedule B. 2—k	Patents, copyrights, and trade-marks.....		
Schedule B. 2—l	Other personal property.....		
Schedule B. 3—a	Debts due on open accounts.....		
Schedule B. 3—b	Policies of insurance.....		
Schedule B. 3—c	Unliquidated claims.....		186,196.28
Schedule B. 3—d	Deposits of money in banks and elsewhere.....		
Schedule B. 4	Property in reversion, remainder, expectancy or trust.....		500.00
Schedule B. 5	Property claimed as exempt.....		4,000.00
Schedule B. 6	Books, deeds and papers.....		
Schedule B, total			<u>340,246.18</u>

J. J. Smith

Petitioner

(1)

Schedule A. Statement of All Debts of Debtor

SCHEDULE A-1.

Statement of all creditors to whom priority is secured by the act.

A.—Wages due workmen, servants, clerks, or traveling or city salesmen on salary or commission basis, whole or part time, whether or not selling exclusively for the bankrupt, to an amount not exceeding \$600 each, earned within three months before filing the petition.		Amount due or Claimed.
Reference to Ledger or Voucher. — Names of Creditors. — Residences (if unknown, that fact must be stated). — When and where incurred or contracted. — Whether claim is contingent, unliquidated or disputed. — Nature and consideration of the debt: and whether incurred or contracted as partner or joint contractor and, if so, with whom.		Dollars Cents
<p>C. M. Brady Phoenix, Arizona February, March and April, 1946 (undisputed)</p>		\$215.00
B.—Taxes due and owing to—(1) The United States		15,909.44*
(2) The State of <u>Arizona - none</u>		
(3) The county, district or municipality of <u>Pima</u> State of <u>Arizona</u>		857.00
<p>Reference to Ledger or Voucher. — Names of Creditors. — Residences (if unknown, that fact must be stated). — When and where incurred or contracted. — Whether claim is contingent, unliquidated or disputed. — Nature and consideration of the debt: and whether incurred or contracted as partner or joint contractor and, if so, with whom.</p> <p>*This is total of the claim remaining of record; this amount was included in a judgment entered in the Superior Court of Maricopa County in favor of the United States and against T. J. Smith, Warren M. and Lewis M. Tenney, and Arthur Pinner, Jr., which judgment was paid in full and accepted by the U. S. officials but final settlement has not been accepted by the Commission of Internal Revenue. We are informed that it contains certain penalties which they will not waive in the approx. amt. of \$574.21</p>		
<p>C.—(1) Debts owing to any person, including the United States, who by the laws of the United States is entitled to priority. which may be a final liability.</p> <p>Reference to Ledger or Voucher. — Names of Creditors. — Residences (if unknown, that fact must be stated). — When and where incurred or contracted. — Whether claim is contingent, unliquidated or disputed. — Nature and consideration of the debt: and whether incurred or contracted as partner or joint contractor and, if so, with whom.</p> <p>(Above stated United States for tax liens and the taxes due Pima County, Arizona.)</p>		
<p>C.—(2) Rent owing to a landlord who is entitled to priority by the laws of the State of _____, accrued within three months before filing the petition, for actual use and occupancy.</p> <p>Reference to Ledger or Voucher. — Names of Creditors. — Residences (if unknown, that fact must be stated). — When and where incurred or contracted. — Whether claim is contingent, unliquidated or disputed. — Nature and consideration of the debt: and whether incurred or contracted as partner or joint contractor and, if so, with whom.</p> <p>None</p>		
Total		\$16,981.44
<p><i>T. J. Smith</i> (2)</p>		Petitioner

SCHEDULE A-2.

Creditors Holding Securities

N. B.—Particulars of securities held, with dates of same, and when they were given, to be stated under the names of the several creditors, and also particulars concerning each debt, as required by the Act of Congress relating to Bankruptcy, and whether contracted as partner or joint contractor with any other person, and if so, with whom.)

Reference to Ledger or Voucher.—Names of Creditors.—Residences (if unknown, that fact must be stated).—Description of Securities.—When and where debts were contracted, and nature and consideration thereof.—Whether claim is contingent, unliquidated or disputed.

Value of Securities		Amount due or Claimed.	
Dollars	Cents	Dollars	Cents

L. M. White, Tucson, Arizona,
Real estate mortgage covering the
following described property:

The southwest quarter of the northwest
quarter;
The southwest quarter;
The west half of the southeast quarter;
The southeast quarter of the southeast
southeast quarter of Section 15;
The north half of Section 22, and
All of Section 16;
All in Township 11 South of Range 10
East, G. & S. R. B. & M., Pima County,
Arizona, 1,280 acres

\$115,000.00

Amount of Mortgage
Interest at 6% for three-quarters

\$23,780.00
1,070.10

Mortgage dated March 16, 1943, for money loaned.

Total \$24,850.10

J. B. Smith
(3)

Petitioner



SCHEDULE A-3.

Creditors whose Claims are Unsecured

N. B.—When the name and residence (or either) of any drawer, maker, endorser, or holder of any bill or note, etc., are unknown, the fact must be stated, and also the name and residence of the last holder known to the debtor. The debt due to each creditor must be stated in full, and any claim by way of set-off stated in the schedule of property).

<p>Reference to Ledger or Voucher.—Names of Creditors.—Residences (if unknown, that fact must be stated).—When and where contracted.—Whether claim is contingent, unliquidated or disputed.—Nature and consideration of the debt, and whether any judgment, bond, bill of exchange, promissory note, etc., and whether contracted as partner or joint contractor with any other person; and, if so, with whom.</p>	<p>Amount due or Claimed.</p>
<p>Dollars Cents</p>	
<p>Fred Tregaska and Edell, Tucson, Arizona, merchandise 1946 promissory note in the amount of with interest at 8%</p>	<p>600.00 28.00</p>
<p>Arizona Fertilizer Company, Phoenix, Arizona dusting cotton, 1946</p>	<p>1,103.64✓</p>
<p>Marsh & Franklin, Phoenix, Arizona airplane for dusting, 1946</p>	<p>160.00✓</p>
<p>Tucson Realty & Trust Company, Tucson, Arizona 3 year insurance policy, 1946-47-48</p>	<p>528.10</p>
<p>Allison Steel Company, Phoenix, Arizona diesel engine and installation 1946</p>	<p>10,022.51✓</p>
<p>Shell Chemical Company, Phoenix, Arizona fertilizer 1946</p>	<p>334.06✓</p>
<p>Allan K. Perry, 1st Nat'l Bank Bldg., Phoenix, Arizona attorney's fees</p>	<p>3,796.47</p>
<p>Judgment in favor of Warren M. & Lewis N. Tenney dated October 22, 1946, c/c Jennings, Strauss & Trask, subject to allowances as follows: Phoenix, Arizona</p>	<p>10,000.00</p>
<p>Judgment in favor of the City of Phoenix in the amount of \$2500.00, dated April 25, 1945, with interest at 6% until paid against Warren M. & Lewis N. Tenney and T. J. Smith - equipment rental 1943</p>	<p>2,500.00</p>
<p>Judgment in favor of Phelps-Dodge Mercantile Co. in the amount of \$463.39 with interest at 6% until paid, dated May 31, 1944 - merchandise 1942-43</p>	<p>463.39</p>
<p>(Note: It is provided in the judgment in favor of the Tenneys and against T. J. Smith that credit on this \$10,000.00 judgment shall be given for any part of the judgment in favor of Phelps-Dodge Mercantile Co. or the City of Phoenix over and above 50% thereof paid by T. J. Smith is credited on the above \$10,000.00 judgment with interest.)</p>	
<p>Total 29,536.17</p>	
<p><i>T. J. Smith</i> (4)</p>	<p>Petitioner</p>

SCHEDULE A-3 Continued

Creditors whose Claims are Unsecured

N. B.—When the name and residence (or either) of any drawer, maker, endorser, or holder of any bill or note, etc., are unknown, the fact must be stated, and also the name and residence of the last holder known to the debtor. The debt due to each creditor must be stated in full, and any claim by way of set-off stated in the schedule of property).

reference to Ledger or Voucher.—Names of Creditors.—Residences (if unknown, that fact must be stated).—When and where contracted.—Whether claim is contingent, unliquidated or disputed.—Nature and consideration of the debt, and whether any judgment, bond, bill of exchange, promissory note, etc., and whether contracted as partner or joint contractor with any other person; and, if so, with whom.

Amount due
or Claimed.

Dollars Cents

Judgment in favor of Arthur Pinner, Jr., dated October 4, 1946, in the total sum of and costs in the sum of c/o Moore, Remley & Necca, Phoenix, Arizona	\$78,562.70 1,060.00
(Such judgment provides for an off-set against the same in the amount of judgment entered in favor of T. J. Smith and against Arthur Pinner, Jr., on the same date in the amount of \$32,002.00 leaving a net amount of \$47,620.70 in favor of Pinner, pending in Supreme Court on appeal, unliquidated.)	
Claim of Belyea Trucking Company in the approximate sum of \$700.00, trucking 1942-43, 6800 S. Alameda St., (This is unliquidated and disputed.) Los Angeles, Calif.	700.00
Claim of Jennings, Strouss & Trask in the amount of (This is unliquidated and disputed.) Attorneys' fees for Warren M. and Lewis M. Tenney and T. J. Smith	2,100.00
Claim of Wid Coffin, St. Anthony, Idaho, in the sum of (This is unliquidated and disputed.) equipment for 1943	6,400.00

Total \$88,822.70

J. H. Smith

Petitioner

(4)-2

SCHEDULE A-4.

Liabilities on Notes or Bills Discounted which ought to be Paid by the Drawers, Makers, Acceptors, or Indorsers.

(N. B.—The dates of the notes or bills, and when due, with the names, residences, and the business or occupation of the drawers, makers, acceptors, or indorsers thereof, are to be set forth under the names of the holders. If the names of the holders are not known, the name of the last holder known to the debtor shall be stated, and his business and place of residence. The same particulars shall be stated as to notes or bills on which the debtor is liable as indorser.)

Reference to Ledger or Voucher.—Names of holders as far as known.—Residences (if unknown, that fact must be stated).—Place where contracted.—Whether claim is disputed.—Nature and consideration of liability, whether same was contracted as partner or joint contractor, or with any other person; and, if so, with whom.

Amount due
or Claimed.
Dollars Cent

None

Total

J. J. Smith
(5)

Petitioner

Accommodation Paper.

B.—The dates of the notes or bills, and when due, with the names and residences of the drawers, makers, acceptors, and endorsers thereof, are to be set forth under the names of the holders; if the debtor be liable as drawer, maker, acceptor, or indorser thereof, it is to be stated accordingly. If the names of the holders are not known, the name of the last holder known to the debtor should be stated, with his residence. Give same particulars as to other commercial paper.)

Reference to Ledger or Voucher.—Names of Holders.—Residences (if unknown, that fact must be stated).—Names and residences of persons accommodated.—Place where contracted.—Whether claim is disputed.—Whether liability was contracted as debtor or joint contractor, or with any other person; and, if so, with whom.

Amount due or Claimed.
Dollars Cents

None

Total

T. J. Smith

Petitioner

Oath to Schedule A

UNITED STATES OF AMERICA,

DISTRICT OF Arizona
COUNTY OF Maricopa } ss.
Arizona

I, T. J. Smith, the person whose name subscribed to the foregoing schedule, do hereby make solemn oath that the said schedule is a statement of all my debts, in accordance with the Act of Congress relating to bankruptcy, according to the best of my knowledge, information, and belief.

T. J. Smith

Petitioner

Subscribed and sworn to before me this 12th day of March, 1947.

My commission expires:

October 24, 1949

John W. Berlin
Notary Public

(Official Character.)

Schedule B. Statement of All Property of Debtor

SCHEDULE B-1.

Real Estate

Location and Description of all Real Estate owned by Debtor, or held by him, whether under deed, lease or contract.—Incum-
brances thereon, if any, and dates thereof.—Statement of particulars relating thereto.

Estimated value of
Debtor's Interest.

Dollars Cents

The southwest quarter of the northwest quarter;
The southwest quarter;
The west half of the southeast quarter;
The southeast quarter of the southeast quarter
of Section 15;
The north half of Section 22, and
All of Section 16;
All in Township 11 South of Range 10 East,
G. & S. R. B. & M., Pima County, Arizona
1,280 acres, \$115,000.00, subject to
mortgage as set forth in Schedule A-2

\$90,149.90

Total

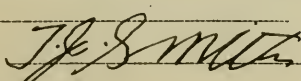
\$90,149.90

J. F. Smith

Petitioner

(7)

SCHEDULE B-2
Personal Property

	Dollars	Cents
Cash on hand	\$500.00	
Negotiable and non-negotiable instruments and securities of any description, including stocks in incorporated companies, interests in joint stock companies, and the like (each to be set out separately)		
None		
Stock in trade, in _____ business of _____, of the value of _____		
None		
Household goods and furniture, household stores, wearing apparel and ornaments of the person	\$7,000.00	
Total	\$7,500.00	
 (8)		Petitioner

SCHEDULE B-2—Continued
Personal Property

E.—Books, Prints, and Pictures

Dollars Cents

\$1,000.00

F.—Horses, Cows, Sheep, and other animals (with number of each)

2 cows, 2 horses

700.00

G.—Automobiles and other Vehicles

1 Ford Tudor Sedan, 1939 Model

600.00

1 Ford Pick Up, 1940 Model

600.00

H.—Farming Stock and Implements of Husbandry

12,000.00

Total

\$14,900.00

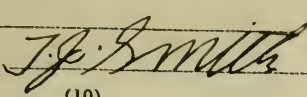
J. J. Smith
(9)

Petitioner



SCHEDULE B-2—Continued

Personal Property

I.—Shipping, and Shares in Vessels	Dollars Cents
None	
<p>J.—Machinery, fixtures, apparatus, and tools used in business, with the place where each is situated</p> <p>Irrigation pumps, engines and equipment</p>	<p>\$35,000.00</p>
<p>K.—Patents, Copyrights, and Trade-Marks</p> <p>None</p>	
<p>L.—Goods or personal property of any other description, with the place where each is situated</p> <p>None</p>	
<p style="text-align: right;">Total</p> <p style="text-align: center;">  (10) </p> <p style="text-align: right;">Petitioner</p>	<p>\$35,000.00</p>

SCHEDULE B-3

Choses in Action

Debts Due Petitioner on Open Account

Dollars Cents

Triple A (Agricultural Adjustment Administration)

\$ 1,000.00

Note: The above credit due petitioner is cancelled by credit on the crop insurance due Triple A.

Policies of Insurance

None

Unliquidated Claims of every nature, with their estimated value

Judgment in favor of T. J. Smith against Arthur Pinner, Jr., in the amount of \$32,002.00 as set forth in Schedule A-3 as offset, now on appeal in Supreme Court

32,002.00

\$12,964.00 taken by Arthur Pinner Jr., of the funds of T. J. Smith under garnishment and applied on the judgment set forth in his favor and against Smith in Schedule A-3 subject to refund in case the Supreme Court reverses the judgment

12,964.00

Claim of T. J. Smith vs. Arthur Pinner, Jr., and U. S. Fidelity & Guaranty Co. for \$123,230.28 for additional work outside construction contract 1942. (Disputed in litigation, Cause #447, U. S. District Court, Phoenix)

123,230.28

Deposits of Money in Banking Institutions and Elsewhere

(C- Con't) Claim of breach of warranty, unliquidated, of Arizona Equipment Sales, Inc., 733 North 19th Avenue, Phoenix, Arizona,

20,000.00

D- None

Total 188,196.28

T. J. Smith

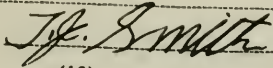
Petitioner

(11)

SCHEDULE B-4.

property in reversion, remainder or expectancy, including property held in trust for the Debtor or subject to any power or right to dispose of or to charge.

NOTE.—A particular description of each interest must be entered, with a statement of the location of the property, the names of the persons now enjoying the same, the value thereof, and from whom and in what manner debtor's interest in such property is or will be derived. If all or any of the debtor's property has been conveyed by deed of assignment, otherwise, for the benefit of creditors, the date of such deed should be stated, the name and address of the person to whom the property was conveyed, the amount realized as the proceeds thereof, and the disposal of the same, as far as known to the debtor.

GENERAL INTEREST.	PARTICULAR DESCRIPTION.	Estimated Value of Interest.	
		Dollars	Cents
Interest in Land			
Interest in Personal Property			
Interest in Money, Stock, Shares, Bonds, Annuities, etc.			
Powers and Powers, Legacies and Bequests			
Total			
Property heretofore conveyed for benefit of creditors.		Amount realized as proceeds of property conveyed	
Date of debtor's property conveyed by deed of assignment, or otherwise, for the benefit of creditors; date of such deed, name and address of party to whom conveyed; amount realized therefrom, and disposal of same, as far as known to debtor.			
Attorney's Fees.			
Fees paid to counsel, and to whom, for services rendered or to be rendered in this bankruptcy.			
M. C. Burk and John W. Corbin		\$500.00	
Total		\$500.00	
		Petitioner	
(12)			

SCHEDULE B-5.

Property claimed as exempt from the operation of the act of Congress relating to bankruptcy.

(N. B.—Each item of property must be stated, with its valuation, and, if any portion of it is real estate, its location, description and present use.)

Property claimed to be exempt by the laws of the United States, with reference to the statute creating the exemption.

Valuation
Dollars Cents

Property claimed to be exempt by State laws, with reference to the statute creating the exemption.

Home of petitioner and his family carved out of the property described with the family dwelling thereon to be selected by the petitioner with the land on which it is situated of the appraised value of

\$4,000.00

Necessary household table and kitchen furniture belonging to the family including their furniture, rugs, carpets, wearing apparel, bedding and bedsteads, and etc.

Tools and implements, farming utensils, two horses, two cows, and the feed and grain necessary for care of such livestock and plaining and raising of crops

Motor vehicles - Ford Pick Up and Ford Tudor Sedan

Necessary equipment for irrigation farming

Total \$4,000.00

J. F. Smith
(13)

Petitioner

SCHEDULE B-6.

Books, Papers, Deeds and Writings relating to Debtor's Business and Estate

following is a true list of all books, papers, deeds and writings relating to petitioner's trade, business, dealings, estate
acts, or any part thereof, which, at the date of this petition, are in petitioner's possession or under petitioner's custody
control, or which are in the possession or custody of any person in trust for petitioner, or for petitioner's use, benefit, or
age; and also of all others which have been heretofore, at any time, in petitioner's possession, or under petitioner's cus-
or control, and which are now held by the parties whose names are hereinafter set forth, with the reason for their
of the same.

Ledgers, journals and accounts of petitioner of
his business transactions

Dollars Cents

Deed to the property described in Schedule B-1, Real
Estate

Receipts and statements of accounts payable and
accounts to be paid; automobile titles; fire insurance
policies; etc.

T. J. Smith

Petitioner

Oath to Schedule B

UNITED STATES OF AMERICA,

STATE OF Arizona

COUNTY OF Maricopa

CITY OF Phoenix

ss.

T. J. Smith

the person who subscribed to the
ing schedule, do hereby make solemn oath that the said schedule is a statement of all my property,
d personal, in accordance with the Act of Congress relating to bankruptcy, according to the best of
nowledge, information, and belief.

T. J. Smith

Petitioner

subscribed and sworn to before me this 12th day of March, 1947.

My commission expires: John W. Carlson

Notary Public

October 24, 1949

(Official Character.)

In the District Court of the United States
for the District of Arizona

B-525-Tucson

In the Matter of
T. J. SMITH, Debtor.

ORDER APPROVING DEBTOR'S PETITION
AND REFERRING MATTER TO CONCIL-
IATION COMMISSIONER

At Tucson, in said District, on the 24th day of March, 1947, before the Honorable Howard C. Speakman, Judge of said Court, the petition of T. J. Smith praying for an opportunity to effect a composition or extension of time to pay his debts in accordance with the provisions of Section 75 of the Bankruptcy Act as amended having been heard and considered,

It Is Ordered that said petition be, and hereby is, approved as filed in good faith and as properly filed under said section, and this cause is referred generally to C. R. McFall, Conciliation Commissioner, for further proceedings.

Entered this 24th day of March, 1947.

HOWARD C. SPEAKMAN,
Judge.

[Endorsed]: Filed March 24, 1947. [23]

[Title of District Court and Cause.]

NOTICE OF
FIRST MEETING OF CREDITORS

To the creditors of T. J. Smith, of Marana, in the county of Pima, and district aforesaid:

Notice is hereby given that on the 24th day of March A. D., 1947, the petition of the said T. J. Smith, praying that he be afforded an opportunity to effect a composition or an extension of time to pay his debts under Section 75 of the Bankruptcy Act, was approved by this court as properly filed under said section; and that the first meeting of his creditors will be held at the Grand Jury Room of the United States District Court, Federal Building, Tucson, Arizona, on Wednesday, the 9th day of April, A. D., 1947, at ten o'clock in the forenoon, at which time the said creditors may attend, prove their claims, examine the debtor, and transact such other business as may properly come before said meeting.

Creditors will further take notice that at said time and place the following additional matters will also be heard, considered and acted upon:

(1) The matter of exemptions to which the debtor is entitled under the law;

(2) Any proposal for composition or extension which the debtor desires to submit;

(3) The farmer's proposal for leave or approval of the Court to continue his farming operations for

the season 1947-48 under share crop lease or agreement with one Cecil Payne, of Marana, Arizona, and to plant, grow and dispose of a cotton crop or other crops on and from his farming lands during said season to immediately arrange for the financing of said operations and to pledge such crops as security for money advanced for such purposes, to provide for repayment of such advances, and to consider any other similar proposal for the maintenance and operation of said farm during the coming season, and the terms and conditions thereof.

C. R. McFALL,
Conciliation Commissioner.

In the District Court of the United States for the
District of Arizona, Office of Conciliation Commissioner, 402 Valley National Building,
Tucson, Arizona.

IN PROCEEDINGS FOR A COMPOSITION OR EXTENSION

In the Matter of
T. J. SMITH, Debtor.

No. B-525-Tucson.

SUMMARY OF INVENTORY, STATEMENT OF INDEBTEDNESS AND LIST OF CREDITORS

Creditors Will Further Take Notice that the fol-

lowing is a summary of the inventory filed by the above named debtor:

Real estate	90,149.90
Farming stock and implements.....	12,000.00
Livestock	700.00
Household goods	7,000.00
Automobiles and other vehicles.....	1,200.00
Cash on hand.....	500.00
Books, prints and pictures.....	1,000.00
Machinery, fixtures and tools.....	35,000.00
Unliquidated claims	188,196.28
Property in reversion, remainder, expectancy or trust.....	500.00
Property claimed as exempt.....	4,000.00

Further that the following is a statement of the debtor's indebtedness as shown by the schedules:

Taxes	16,766.44
Wages	215.00
Secured claims	24,850.10
Unsecured claims	118,358.87

The names and addresses of the creditors to whom priority is secured by law and the amount owing to each are:

C. M. Brady, c/o Johannessen & Durand Co., First Nat'l. Bank Bldg., Phoenix, Ariz., for wages or salary	215.00
United States, c/o Mr. Frank Flynn, United States Attorney, Federal Bldg., Phoenix, Ariz., for taxes....	15,909.44

(This is total of the claim remaining of record; this amount was included in a judgment entered in the Superior Court of Maricopa County in favor of the United States and against T. J. Smith, Warren M. and Lewis N. Tenney, and Arthur Pinner, Jr., which judgment was paid in full and accepted by the U. S. officials but final settlement has not been accepted by the Commissioner of Internal Revenue. We are informed that it contains certain penalties which they will not waive in the approximate amount of \$574.21 which may be a final liability.) [25]

County of Pima, State of Arizona, c/o County Treasurer and Ex Of- ficio Tax Collector, Tucson, Ari- zona, for Taxes	857.00
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The names and addresses of the secured creditors and the amount owing to each are:

L. M. White, 2950 E. 1st St. Tucson, Ariz.	24,850.00
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The names and addresses of the unsecured creditors and the amount owing to each are:

Fred Tregaskes and Edell, 933 N. Stone Ave., Tucson, Ariz.....	628.00
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Arizona Fertilizer Co. c/o Messrs. Jennings, Strouss & Trask, Attor- neys at Law, Title & Trust Bldg., Phoenix, Ariz.	1,103.64
Marsh & Franklin, Sky Harbour Airport, Phoenix, Arizona.....	160.00
Tucson Realty & Trust Co. 2 S. Stone, Tucson, Arizona	528.10
Allison Steel Company, P. O. Box 2151, Phoenix, Arizona.....	10,022.51
Shell Chemical Company, 2300 Grand Ave., Phoenix, Arizona.....	334.06
Allan K. Perry, First Nat'l Bank Bldg., Phoenix, Arizona	3,796.47
Warren M. and Lewis N. Tenney, c/o Jennings, Strouss & Trask, Phoenix, Arizona	10,000.00
City of Phoenix, c/o Mr. Jack Chois- ser, City Attorney, City Hall, Phoenix, Arizona	2,500.00
Phelps-Dodge Mercantile Co., c/o Messrs. Evans, Hull, Kitchel, Ryley & Jenckes, Attorneys at Law, Title & Trust Bldg., Phoe- nix, Arizona	436.39
Arthur Pinner, Jr., c/o/ Messrs. Moore, Romley, & Roca, Attorneys at Law, Title & Trust Bldg., Phoe- nix, Arizona	79,622.70
Belyea Trucking Co., 6800 S. Ala- meda St., Los Angeles, Califor- nia — Disputed	700.00

Messrs. Jennings, Strouss & Trask, Attorneys at Law, Title & Trust Bldg., Phoenix, Arizona — Dis- puted	2,100.00
Wid Coffin, c/o Mr. Ben C. Hill, At- torney at Law, 77 N. Court, Tuc- son, Arizona—Disputed	6,400.00

C. R. McFALL,
Conciliation Commissioner.

[Endorsed]: Filed March 29, 1947. [26]

[Title of District Court and Cause.]

NOTICE OF
ADJOURNED MEETING OF CREDITORS

To the creditors of T. J. Smith, of Marana, in the
County of Pima, and District aforesaid:

Notice is hereby given that the first meeting of
creditors was held and proceedings had on April 9,
1947, and upon application of the debtor, further
proceedings were continued until Tuesday, April
15, 1947, at two o'clock p.m. at the Grand Jury
Room of the United States District Court, Federal
Building, Tucson, Arizona; that at said time and
place last mentioned, consideration of the matters
and things mentioned in the Notice of the First
Meeting of Creditors will be resumed and further
proceedings had in connection therewith.

C. R. McFALL,
Conciliation Commissioner.

Dated, April 9, 1947.

I, C. R. McFall, Conciliation Commissioner, do hereby certify that on April 10, 1947, I mailed each of the creditors of the above named debtor named in the schedules filed herein, and to other persons as shown by the mailing list attached hereto to the addresses of each as they appear in said schedule and/or mailing list in sealed and penalty envelopes at the Post Office in the City of Tucson, Pima County, Arizona, a copy of the foregoing notice.

C. R. McFALL,
Conciliation Commissioner.

[Endorsed]: Filed April 18, 1947. [27]

[Title of District Court and Cause.]

AMENDMENT TO
SCHEDULES A-2 AND B-2 H

Comes now the debtor, undersigned, and asks leave to: Amend Schedule A-2 by correcting the indebtedness claimed by L. M. White and shown on said schedule as \$23,000.00 to the correct sum of \$26,000.00 with interest at 6 per cent per year for nine months.

Amend and correct Schedule B-2 H by adding thereto the following:

- 1 Model M International Tractor
with four row cultivator attach-
ment at the value of \$2,000.00

That the summaries as shown in said schedules be

changed to conform to these amendments and corrections.

/s/ T. J. SMITH,
Petitioner.

United States of America, District of Arizona,
State of Arizona, County of Maricopa—ss.

I, T. J. Smith, the petitioning debtor mentioned in the foregoing petition, do hereby make solemn oath that the statements contained herein are true according to the best of my knowledge, information, and belief.

T. J. SMITH.

Subscribed and sworn to before me this 15th day of April, 1947.

[Seal] JOHN W. CORBIN,
Notary Public.

My commission expires: October 24, 1949.

[Endorsed]: Filed April 18, 1947. [28]

[Title of District Court and Cause.]

FINAL INVENTORY

At Tucson in said District on this 15th day of April, 1947:

The undersigned Conciliation Commissioner for the County of Pima does hereby find that the following is a Final Inventory of the estate of the aforesaid T. J. Smith; that in the preparation of such inventory I have taken the inventory filed by

the debtor, both as to items and valuations; that no creditors' committee was appointed or requested by the creditors for the purpose of submitting a Supplementary Inventory, and no such supplementary inventory was submitted by any creditor or creditors:

Assets and property of the debtor as set forth and itemized in his schedules B-1, 2 and 3 annexed to his Petition for Composition or Extension, filed in this pro- ceeding	\$188,196.28
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And in addition to the above property, one Model M Interna- national Tractor with four-row cultivator attached, as per amendment of Schedule A-2 filed with the Conciliation Com- missioner, April 15, 1947.....	2,000.00
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Total	\$190,196.28
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C. R. McFALL,
Conciliation Commissioner.

[Endorsed]: Filed April 18, 1947. [29]

[Title of District Court and Cause.]

PROCEEDINGS OF C. R. McFALL,
CONCILIATION COMMISSIONER

1947

- Mar. 24—Received Petition and Schedules of Debtor Letter to attorney for debtor requesting additional information as to addresses of creditors.
- Mar. 26—Conference and consultation with debtor and his attorney.
- Mar. 27—Prepare and file mailing list of creditors and other interested parties.
- Mar. 28—Received and filed debtor's petition for leave to carry on farming operations and to arrange for financing, etc.
- Mar. 28—Order First Meeting of Creditors to be held April 9, 1947, at 10 o'clock in the Grand Jury Room of the U. S. District Court, Federal Building, Tucson, Arizona.
- Mar. 28—Mail notice of first meeting of creditors to all creditors and other interested parties as shown by schedules and mailing list on file.
- Mar. 29—Public Notice of First Meeting of Creditors in Arizona Daily Star.
- Apr. 3—Letter from M. C. Burk, attorney, and inventory of farming equipment, improvements and fixtures.
- Apr. 9—Order Setting Apart Exemptions.

C. R. McFALL,

Conciliation Comm. [30]

[Title of District Court and Cause.]

Minutes of First Meeting of Creditors

At Tucson in said District upon this 9th day of April, 1947, before the undersigned Conciliation Commissioner for Pima County, Arizona, the first meeting of creditors in the above case was had, of which meeting due notice was given to creditors by publication in the Arizona Daily Star, a newspaper of general circulation printed and published in Tucson, Arizona, and by mail, as required by law, and the undersigned sat at the time and place mentioned in said notice, to preside at the examination of the debtor and for such further proceedings as were referred to in the Notice of said meeting, and as may be taken according to law.

Annette Freeman was duly sworn to act as official court reporter of the proceedings.

The debtor, T. J. Smith, was present in person and with his wife, Mrs. T. J. Smith, and his attorney, John W. Corbin, Industrial Bldg., Phoenix, Ariz.

There were present and represented at said meeting, creditors as follows:

Wid Coffin by his attorneys, Ben C. Hill, 77 North Court, Tucson, Arizona, and Ashby I. Lohse, 127 North Stone, Tucson, Arizona;

Warren M. and Lewis N. Tenney and Messrs. Jennings, Strouss & Trask by their attorney, Henry Stevens, 619 Title & Trust Bldg., Phoenix, Arizona;

L. M. White by his attorneys, Ralph W. Bilby and Arthur Henderson of the firm of Knapp,

Boyle, Bilby & Thompson, Valley National Building, Tucson, Ariz.

The following claims were filed and tentatively allowed:

Allan K. Perry, First Nat'l Bank Bldg., Phoenix, Arizona—Unse- cured	\$ 3,796.47
Louis E. Young, Pima County Treasurer, Tucson, Arizona—Se- cured	879.03
Arizona Fertilizers, Inc., M. F. Wharton, Treasurer, c/o Mr. I. A. Jennings, Messrs. Jennings, Strouss & Trask, Attorneys at Law, Title & Trust Bldg., Phoenix, Arizona, Unsecured	1,103.64
Warren M. and Lewis N. Tenney, c/o Mr. I. A. Jennings, Messrs. Jennings, Strouss & Trask, Attor- neys at Law, Title & Trust Bldg., Phoenix, Ariz., Unsecured	10,000.00
I. A. Jennings, Messrs. Jennings, Salmon & Trask, Attorneys at Law, Title & Trust Bldg., Phoe- nix, Arizona, Unsecured	2,159.00

The debtor was duly sworn and examined and offered in evidence in connection with his testimony, Exhibits A and B, being proposed budgets for his farming operations for 1947.

Due to the untimely death of Mr. Milton Burk, one of the attorneys for the debtor, among other

reasons, the debtor was unable to submit a definite proposal for composition or extension, and Mr. Corbin, attorney for the debtor, requested additional time for the preparation of the same and submission to creditors, and requested that further proceedings on this First Meeting of Creditors be adjourned to a later date. His request was granted, and thereupon the undersigned Commissioner ordered that this First Meeting of Creditors be adjourned for further proceedings until April 15, 1947, at two o'clock p.m. at the Federal Grand Jury Room of the United States District Court, Federal Building, Tucson, Arizona.

The debtor was directed to submit any corrections or changes in his schedules, either of assets or liabilities, at that time, and the creditors were notified to submit necessary proof that their claims are free from usury as defined by the laws of Arizona, as required by Sec. 75(i) of the Bankruptcy Act.

All matters mentioned in the Notice of the First Meeting of Creditors and any other matters which may properly be considered in connection with the same or with the petition herein are therefore continued until the time and place aforesaid.

C. R. McFALL,
Conciliation Commissioner.

1947

April 15, 1947—Received and filed statements relative to usury concerning the claims of: Jennings, Salmon & Trask, Tenney and Tenney, Arizona Fertilizers, Inc.

Minutes of Adjourned
First Meeting of Creditors

This matter came on for further hearing this 15th day of April, 1947. Annette Freeman, the court reporter heretofore duly sworn to act, was present and took the proceedings in shorthand. The debtor, T. J. Smith, was present in person and with his wife, Mrs. T. J. Smith, and his attorney, Mr. John W. Corbin. Mr. Ben C. Hill and Mr. Ashby I. Lohse appeared for the creditor, Wid Coffin. Mr. Ralph W. Bilby and Mr. Arthur Henderson of the firm of Knapp, Boyle, Bilby & Thompson appeared for the creditor, L. M. White.

The debtor submitted a petition for proposed extension of the time for payment of his debts, which was received and filed. The debtor also submitted an amendment to Schedules A-2 and B-2-h, which was received and filed, to which is attached an itemized statement of farm equipment, household effects and buildings, which was also received and filed.

The debtor through his attorney then stated for the record that he would be unable to obtain the approval of his proposal for extension by a sufficient number of his creditors to comply with the requirements of the Bankruptcy Act under which his petition was filed herein.

The debtor was further examined by counsel

present and by the Commissioner. Whereupon, L. M. White, secured creditor, by his attorneys, Ralph W. Bilby and Arthur Henderson, objected to the jurisdiction of the Court or to any further proceedings herein, upon the ground and for the reason that the debtor has not shown in this proceeding that he is a farmer within the meaning of the Act and that the Court has no jurisdiction to entertain further proceedings in this matter for that reason.

This proposition was allowed by counsel.

Whereupon, this matter was submitted to the Commissioner for report to the District Court.

April 15, 1947—Filed Final Inventory.

April 17, 1947—Report and Certificate to District Judge. [33]

April 18, 1947—Expenses incurred to date:

21 packages legal-size envelopes \$ 1.35

Mimeographing envelopes and 200 Notices of First Meeting of Creditors, and Summary of Inventory with List of Creditors (E. E. Gill) 8.85

Publication—Arizona Daily Star. Notice First Meeting of Creditors 6.82

\$17.02

C. R. McFALL,
Conciliation Commissioner.

CERTIFICATE OF COMMISSIONER

State of Arizona,
County of Pima—ss.

I hereby certify that the foregoing memorandum is made as my record of proceedings in the above entitled matter.

Dated, April 18, 1947.

C. R. McFALL,
Conciliation Commissioner.

[Endorsed]: Filed April 18, 1947. [35]

[Title of District Court and Cause.]

REPORT AND CERTIFICATE
TO THE JUDGE

To the Hon. Howard C. Speakman, United States
District Judge:

I, the undersigned Conciliation Commissioner, to whom was referred the matter of T. J. Smith, Debtor, hereby certify that in the administration thereof, meetings of creditors were held before me in the Grand Jury Room of the above Court at Tucson, on April 9, 1947, and on April 15, 1947, for the purpose of considering the debtor's proposals for composition or extension.

I further certify that the debtor was unprepared to submit any proposal at the first meeting of the creditors and requested additional time within which to formulate such a proposal and obtain the

necessary consent of his creditors, which motion was granted, and the matter was continued until April 15. That on April 15, 1947, the debtor filed a Proposal for Extension and at the same time stated that he was and would be unable to obtain acceptance in writing by a majority in number and amount of both secured and unsecured creditors to such proposal, and I thereupon declared the offer not accepted.

That at the meetings of said creditors the secured creditor, L. M. White, and Tucson Realty and Trust Co., a non-secured creditor, objected to the proceedings upon the ground that the Court was without jurisdiction to proceed under Section 75 of the Bankruptcy Act in this matter, for the reason and upon the ground that the debtor had failed to prove that he was a farmer and entitled to the benefits of said Act.

As the record now stands, your Conciliation Commissioner is of the opinion that he has no authority or power to determine the jurisdictional question presented and hence makes no findings or conclusions in reference thereto. 8 C.J.S., Par. 766, p. 1742, Note 25. [36]

Wherefore, the Debtor having failed to obtain the necessary acceptances of his proposal by both the secured and unsecured creditors, as required by the Act, this certificate is filed for the information of the Court and for such further action as may be taken according to law.

I transmit herewith as a part of this certificate,

the papers and records filed with me, together with my record of proceedings, to date.

April 17, 1947.

Respectfully submitted,
C. R. McFALL,
Conciliation Commissioner.

Copy of foregoing Report and Certificate mailed to John W. Corbin, Industrial Bldg., Phoenix, Ariz., Attorney for Debtor, this April 18, 1947.

C. R. McFALL,
Conciliation Commissioner.

[Endorsed]: Filed April 18, 1947. [37]

[Title of District Court and Cause.]

ORDER TO SHOW CAUSE

C. R. McFall, Conciliation Commissioner, having filed herein his Report and Certificate to the Judge, and it appearing therefrom that a meeting of creditors was held in this matter on April 15, 1947, for the purpose of considering the debtor's proposals for composition or extension and that at said meeting certain creditors objected to these proceedings upon the ground that the Court was without jurisdiction to proceed under Section 75 of the Bankruptcy Act in this matter for the reason that the petitioner, T. J. Smith, is not a farmer within the meaning of said Section 75, and

It further appearing to the Court that it is

necessary to dispose of said objections and to determine the question of whether or not the court has jurisdiction in this matter, and

It further appearing to the court that it is necessary to take evidence upon which the court can determine such question,

It Is Therefore Ordered that T. J. Smith, petitioner herein, appear before this court on the 14th day of May, 1947, at the hour of ten o'clock a.m., to show cause why the objection to the jurisdiction of this court should not be sustained and the case dismissed upon the ground and for the reason that said petitioner is not a farmer within the meaning of Section 75 of the Bankruptcy Act.

Dated at Tucson, Arizona, April 22, 1947.

HOWARD C. SPEAKMAN,
United States District Judge.

[Endorsed]: Filed April 2, 1947. [38]

[Title of District Court and Cause.]

MEMORANDUM

On behalf of L. M. White, the undersigned attorneys file the following memorandum in support of the position of the secured creditor, that the debtor in this matter is not a farmer entitled to the benefits covered by Section 75 (s) of the Bankruptcy Act.

The testimony of the debtor conclusively shows

that he was a contractor during the period from 1942 to 1945. While he was a contractor, he leased his farm in 1944. It further appears from the record that a great portion of the debts listed by the debtor are debts arising out of the contracting business. The question, therefore, is whether a man can be a farmer for several years and then enter a separate and completely distinct business, such as contracting for a period of a few years, incur large debts during the time he is engaged in such separate and distinct business, then return to farming and not long after such return file his petition under the provisions of the Bankruptcy Act in question and ask that he be given the benefits of the Act in such manner that the creditors of his contracting business would suffer the delays incident to the procedure under the Agricultural Composition and Extension Provisions of the Bankruptcy Act.

When this Act was extended in 1944 the House Committee on the Judiciary in Report 1127 of February 15, 1944, said that [39] the purpose of the Act was:

“It was designed to relieve distressed farmers who were in default in their farm mortgages and to relieve agriculture from the effects of the deflation in land values resulting from the depression.”

The history of the Act and the language of the Act makes it clear that Congress never intended that a person might engage in a wholly separate and distinct business, incur large indebtedness, and

then return to a farming business in such manner as to avoid or postpone payment of all indebtedness incurred in the separate and distinct business. For the report of the House Committee see:

U. S. Code Congressional Service 1944, page 974.

The courts have specifically said that the words of the statute have a color and content that may vary with the setting. See:

Bank vs. Beach, 81 Law Edition, 1206, 301 U. S. 435;

Benitez vs. Bank, 109 Fed. 2d 194, 313 U. S. 270.

For this reason no one case can be taken as a governing precedent for a decision of another in this field unless the evidence upon which the court acted in the case cited as precedent can be fully gathered from the decision. Debtor's attorney cites the Stoller case as controlling here. We submit that the Stoller case is explainable upon the theory that the business in which the debtor was there engaged was not a business wholly disassociated from farming. It seems apparent that a farmer might engage in a related business such as a seed business or a fertilizing business without losing his status as a farmer, but we cannot understand how a farmer might enter a wholly distinct and different type of business, incur debts in that business, and then attempt to use his status as a farmer to postpone payment of such debts.

In our search we have been unable to find any case exactly in point in this matter, and we must rely upon the evident intention of the Act as shown from the history of the Act and the clear provisions of the Act itself.

The Act is fully annotated on the particular problem here in:

99 ALR 1378; 112 ALR 1467, and 126 ALR 678.

The history of the Act is recited at some length in the case of: *In re McGrew*, 126 Fed. 2 676.

An interesting case in which the court sought to define the purpose of the act is *In re Christy*, 50 Fed. Supp. 78 later followed *In re N. H. Co.*, 62 Fed. Supp. 22. These cases hold that the Act cannot be used as a subterfuge to escape liability on obligations incurred in other businesses. The court likens such attempt to the attempt made during the war by parents to have their sons classified as "farmers" to evade the draft by purchase of a farm to be operated by such draft evaders.

The burden of proof is on the debtor to show that he is a farmer within the purview of the Act. See:

McNutt vs. Company, 80 Law Edition 1135,
and *Livestock Company vs. Bank*, 122 Fed.
2d 193.

On behalf of the creditor, L. M. White, it is submitted that the debtor in this case has not sustained the burden of proof necessary to show that he is a person entitled to the benefit of this Act.

We have filed with this brief a transcript of the examination of the debtor at the first hearing on April 9, 1947, and at the adjourned meeting on April 15, 1947. We have also filed with this memorandum the certified copy of the Contractor's License issued to the debtor in 1942. The transcript and the license show beyond any reasonable doubt that the debtor incurred substantially all of the indebtedness shown on his schedule by his unsuccessful venture in the contracting business. The creditor respectfully requests the court if there is any doubt on this point, that a further hearing be had at which independent evidence will be submitted by the creditor showing that the debtor Smith personally engaged in the contracting business during the period in question and carried on such business all during the period.

For the reasons given, the creditor submits that the court should dismiss the debtor's petition.

Dated this 2nd day of June, 1947.

KNAPP, BOYLE, BILBY &
THOMPSON,
ARTHUR HENDERSON,
Attorneys for Creditor,
L. M. White. [42]

Office of the Registrar of Contractors
State of Arizona
(Certified Copy)

License No. 5813.

Signature of Licensee:

/s/ T. J. SMITH.

State of Arizona,
Office of the Registrar—ss.

To All Whom It May Concern:

This is to Certify that T. J. Smith having been shown to be possessed of all the necessary qualifications, and having complied with all the requirements of the law, was, by an order of the Registrar of Contractors, made and entered of record on the 26th day of August, in the year of Our Lord One Thousand Nine Hundred and Forty-Two, duly licensed and admitted to engage in and pursue the business of General Engineering Contractor (Class A-1-3-5-6) in the State of Arizona.

Given under my hand and the seal of the Registrar of Contractors in my office in the City of Phoenix, the seat of Government, this 27th day of May, 1947.

[Seal]

MORGAN G. PRATT,

Registrar of Contractors.

Note: This license is not transferable and expires on the thirtieth day of June, 19....

Chapter 102, Session Laws 1931, Regular Session.

In the District Court of the United States for the
District of Arizona

No. B-525-Tucson

In the Matter of

T. J. SMITH, Debtor.

Hearing on first meeting of creditors of T. J. Smith, Debtor, held at the Grand Jury Room of the United States District Court, Federal Building, Tucson, Arizona, on Wednesday, the 9th day of April, 1947, at ten o'clock in the forenoon before C. R. McFall, Conciliation Commissioner.

The following were present:

John W. Corbin, Attorney for Debtor.

T. J. Smith, Debtor.

Mrs. T. J. Smith, Debtor's wife.

Ben C. Hill, Attorney representing Wid L. Coffin.

Ashby Lohse, Attorney representing Wid L. Coffin.

Henry Stevens, of counsel for Jennings, Strouss & Trask, Attorneys for Warren M. and Lewis N. Tenney.

Ralph W. Bilby, of counsel for Knapp Boyle Bilby & Thompson, Attorneys for L. M. White.

Arthur Henderson, of counsel for Knapp Boyle Bilby & Thompson, Attorneys for L. M. White. [45]

Cross-Examination of

T. J. SMITH

Debtor

By Mr. Bilby:

Q. Where do you live?

A. I live in Marana.

Q. That is a ranch or farm? A. Yes.

Q. How long have you been living there?

A. Since 1938.

Q. Continuously? A. Yes.

Q. You have never lived anywhere else during that time?

A. No—well, not since I moved back from Phoenix.

Q. When did you move up from Phoenix?

A. I moved back from Phoenix in 1937.

Q. 1937. You have lived on the ranch continuously? A. That's right.

Q. Have you ever had an office in Phoenix?

A. Yes.

Q. Have you one there now? A. No.

Q. When did you abandon your office in Phoenix? A. About a year ago.

Q. Where was that office?

A. In the Luhrs Building.

Q. How long did you have an office in the Luhrs Building?

A. Possibly a year, a year and a half—all those lawsuits coming on—let's see, about a year and a half.

Q. Did you have an office for the lawsuits? [46]

A. That's right.

(Testimony of T. J. Smith.)

Q. That is what you had it for?

A. That's right.

Q. In order to carry on the lawsuits?

A. That's right.

Q. Did you carry on any other business out of that office?

A. I was doing some work, contract work.

Q. How long were you in the contracting business?

A. Oh, I went out of business in 1937.

Q. Was it in 1937? A. I sold it.

Q. How long were you in it?

A. Well, I started back in about 1935.

Q. Then how long did you stay in it, from 1935 on? A. Up to 1943.

Q. Up to 1943?

A. Yes, I sold the equipment and whatever I had.

Q. When did you sell the equipment?

A. I believe it was 1943.

Q. To whom?

A. To the Stanislaw Company in California.

Q. You have been paid for it?

A. Yes. You are talking about cats?

Q. I am talking about the equipment, the same thing you are talking about. I don't know what it was you owned.

A. That's the contracting equipment.

Q. Have you sold all your contracting equipment? A. Yes. [47]

(Testimony of T. J. Smith.)

Q. You sold it all to these people you just mentioned? A. That's right.

Q. What have you been doing with an office in Phoenix in the last two years?

A. I told you, carrying on lawsuits.

Q. Did you need an office to carry on lawsuits?

A. The last 18 months I haven't had one.

Q. You said you closed it a year ago.

A. Eighteen months I told you.

Q. You said you had it for how long? During what period of time did you have an office in Phoenix? A. You want to know the date?

Q. That's the reason I am asking you, yes.

A. Then give me a little time. I will look it up and give it to you.

Q. Do you know it?

A. Yes, by going to the record.

Q. Do you know it without going to the records?

A. No.

Q. Do you have any idea when you had your office in Phoenix?

A. If you want the exact date, tell me and I will go to the records and get that.

Q. As near as you can. A. I don't know.

Q. Do you know whether it was in 1945 or '46?

A. I don't remember.

Q. Or in 1944? A. I don't remember.

Mr. Bilby: Obviously, Mr. Conciliator, he is avoiding the question. [48]

Mr. Corbin: Well, I object. The question is immaterial.

(Testimony of T. J. Smith.)

Mr. Bilby: Very material.

Mr. Corbin: Two years ago or three, something like that.

Mr. McFall: Well, he is trying to fix the time that he gave up his office in Phoenix.

Mr. Bilby: That's right.

Mr. McFall: I think that's a proper question.

Mr. Bilby: And I think he knows, within a reasonable time.

Q. Do you know when you gave up your office in Phoenix?

A. I answered the question to the best of my ability.

Q. Will you answer it again. Tell us when did you give that up?

A. About eighteen months ago.

Q. How long did you have it?

A. I don't remember the exact date.

Q. Well, approximately how long?

A. I don't remember the exact date.

Q. Was it two years, three years?

A. I don't remember. I will get the record and give you a statement on that if that is what you want.

Q. You say under oath you don't remember how long you had an office there?

A. Not definitely.

Q. Well, approximately?

A. I don't remember definitely how long.

Q. Give me the approximate date.

A. It's possibly two years—three.

Q. Now, during that time that you have had

(Testimony of T. J. Smith.)

that, two or [49] three years, did you occupy it yourself?

A. Now, what are you talking about, me individually or the contracting company?

Q. Yes. Were you up there individually in the office?

A. Yes, I had an office—I had an individual office there for a while.

Q. What business were you engaged in up there at that time? A. I told you, contracting.

Q. And what contracts did you have?

A. I can look up the records and see.

Q. Government contracts, with the government?

A. Not in the individual office there, no.

Q. Did you at that time have government contracts? A. Yes.

Q. I would like to fix the time.

A. We still have litigation.

Q. During the time of your office up in Phoenix?

A. I have litigation over government contracts.

Mr. McFall: I think the purpose of the question is to determine the status of this man as to his farming operations, as to whether he is a farmer. There is no jurisdiction to proceed at all unless the man is a farmer. I think they have the right to inquire into that.

Mr. Bilby: I want to obtain that because I want to know what he was doing.

Q. Did you have substantial contracts during that period of two or three years while you had an office in Phoenix?

A. I was doing tillage work.

(Testimony of T. J. Smith.)

Q. What is tillage work?

A. I don't know. You might get the dictionary and find out what it is.

Mr. Bilby: Do we have to tolerate this? [50]

Mr. McFall: They have the right to ask these questions under the law. Mr. Smith, give them to the best of your ability. You don't have to tell anything you don't know.

Mr. Smith: I don't hesitate giving Mr. Bilby an answer to a question, but he knows what tillage work is.

Mr. Bilby: No, I don't.

Mr. McFall: Even if he did, I think he has a right to ask you.

A. (Answer continued) Tillage work is the way of preparing land for farming.

Q. And you were doing that for other people in the Salt River Valley?

A. I have been in it for 35 years off and on.

Q. Will you answer the question. You were doing that for other people in Salt River Valley?

A. More at Marana—very little at Salt River.

Q. You were doing it for other people for pay?

A. I was doing it for other people, yes.

Q. Did some in the Salt River Valley as well as Marana?

A. I did little in Salt River Valley.

Q. Now, these claims that you list here, of creditors, Marsh & Franklin, Sky Harbour Airport, \$160.00, what was that for?

A. For dusting cotton with an airplane.

(Testimony of T. J. Smith.)

Q. Where was the cotton that was dusted?

A. Up in Marana at the ranch.

Q. At your place? A. Yes.

Q. Allison Steel Company, Phoenix, \$10,022.51?

A. That's for a Diesel motor for the pumping plant.

Q. Is that Diesel motor under mortgage? [57]

A. Is it under mortgage? There is no mortgage on it.

Q. That is not mortgaged to Mr. White?

A. Not that one, no.

Q. Did you turn one in that was mortgaged?

A. No.

Q. That is not mortgaged to anyone?

A. No. I have answered several times.

Q. Allan K. Perry, First National Bank Building, Phoenix, Arizona, \$3796.47. What is that for?

A. That is for attorney's fees.

Q. Incurred in connection with what kind of work?

A. These contracts that I had on these airports.

Q. That was litigation occurring out of your contracts with airports? A. That's right.

Q. Mr. Perry represented you?

A. That's right.

Q. That had nothing to do with your farming?

A. No.

Q. Will you answer it so she can hear you.

A. No, it had nothing to do with the farm.

Q. Warren M. and Lewis N. Tenney, care of Jennings, Strouss & Trask, Phoenix, Arizona, \$10,000.00. What is that for?

(Testimony of T. J. Smith.)

A. That's for the settlement whereby they was to pay certain things, certain things I gave for a judgment, they have paid out on certain litigations and courts.

Q. That was in connection with your contracts?

A. That's right.

Q. It had nothing to do with your farm?

A. No. [52]

Q. City of Phoenix, care of Mr. Jack Choisser, \$2,500. What is that for? A. Who?

Q. City of Phoenix, care of Mr. Jack Choisser, City Attorney, City Hall, Phoenix, Arizona, \$2500.

A. That's in regards to airports, the claim I have just referred to of Tenney's, allowed for 50 per cent of it.

Q. Had nothing to do with your farm?

A. No.

Q. Phelps-Dodge Mercantile Co., \$463.39. That had nothing to do with your farm? That was incurred operating at Douglas? A. That's right.

Q. Arthur Pinner, Jr., care of Messrs. Moore, Romley and Roca, Attorneys at Law, Phoenix, Arizona, \$79,622.70. That is the case that is in court? A. That's right.

Q. That's a suit against you, isn't it, Mr. Smith?

A. That's a suit against—that's a suit against me which is up on appeal in the Supreme Court?

Q. Who is appealing it?

A. Well, you will have to—that's a question the attorney will have to answer.

(Testimony of T. J. Smith.)

Mr. Corbin: Pardon me for laughing. There are four—I think four appeals in that case. Everybody is appealing.

Mr. Bilby: Of course, I don't know anything about it. What I do want to know—all I care about is, this judgment was rendered against Mr. Smith, is that right?

Mr. Corbin: Judgment was rendered in favor of him and judgment was rendered against him.

Mr. Bilby: Well, it's listed here as a claim.

Mr. Corbin: Well, it sets up there some \$32,000 and he got a judgment for \$32,000 and they got a judgment for \$76,000, I think, in the same lawsuit. [53]

Mr. Bilby: Well, the document I got out of court listed it as a claim against Mr. Smith, \$79,000.

Mr. Corbin: That's right, under the schedule it's set up as a credit in there for his judgment against them of \$32,002.

Q. That grew out of your contracting business, didn't it, Mr. Smith?

A. Yes. There is additional moneys in there that the schedule shows.

Q. It had nothing to do with your farm?

A. No.

Q. Belyea Trucking Co., 6800 S. Alameda St., Los Angeles, California, \$700.00, what is that for?

A. That's a disputed claim.

(Testimony of T. J. Smith.)

Q. What is the claim for?

A. I don't exactly know myself.

Mr. Corbin: That's a contract.

Q. It had nothing to do with your farm?

A. No.

Q. Messrs. Jennings, Strouss & Trask, Attorneys at Law, \$2100. What is that for?

A. That's a disputed claim. That's in regard to—I presume that's in regard to some of their services they claim they rendered.

Q. In connection with the contracting business?

A. That's right.

Q. Wid Coffin, \$6,400.00?

A. That's another disputed claim.

Q. In connection with your contracting business? A. Yes.

Q. Has nothing to do with your farm?

A. No. [54]

Q. The only listed claims that have anything to do with your farm then, are Arizona Fertilizer Co., which have anything to do with it?

A. That's right.

Q. What was that for?

A. Arizona Fertilizer? That was for dusting off insects on cotton.

Q. On your farm? A. That's right.

Q. And Sky Harbour, you said, was use of air-planes to dust? A. Applying dust.

Q. What is the Shell Chemical Company?

A. That is fertilizer.

(Testimony of T. J. Smith.)

Mr. Stevens: Which one?

Mr. Bilby: Shell Chemical, \$334.06.

Q. That is for fertilizer used on your farm?

A. That's right.

Q. These are the only claims listed then. Just one more—Fred Tregaskes and Edel. What is that for?

A. That was paint.

Q. Paint used where?

A. On the ranch, on the buildings.

Q. These four claims are the only ones that have anything to do with your farm, aren't they?

Mr. Bilby: I think in fairness to him, he should see the list, but he has already answered.

A. I think that's right.

Q. Now, your assets are listed here, machinery, fixtures and tools. What kind of machinery have you reference to there—\$35,000 machinery and fixtures?

A. That's pumping plant equipment and farming machinery. [55]

Mr. McFall: I may state this, Mr. Bilby, that in this notice, this inventory that the Commissioner sent out, is only in summarized form.

Mr. Bilby: Yes.

Mr. McFall: Some of the items which make up those amounts are listed in the schedules in detail as required by the Act.

Q. That is all farming machinery and equipment?

A. Yes.

Q. You don't have any other?

A. No.

(Testimony of T. J. Smith.)

Q. I have here an item of unliquidated claims, \$188,196.28, that relates to claims growing out of your contracting business, doesn't it, these unliquidated claims?

A. Not all of it, I believe the biggest part of it does; part of it is on some other stuff.

Q. What is the stuff you are claiming—from the Agriculture Products Company? A. No.

Q. What else? Name those that doesn't come out of the contracting business?

A. I have about \$20,000 in there against the Arizona Equipment Sales Corporation.

Q. That has to do with your farming operation? A. That's right.

Q. Then there would be one hundred sixty-eight thousand and some odd dollars that related to your contracting business?

Mr. Corbin: Well, I think the schedule shows—

A. It's outlined in the schedule.

Mr. Bilby: We are not bound by the schedule. May not we ask direct?

Mr. Corbin: I think he ought to have a chance—— [56]

Mr. McFall: If he wants to see the schedules he may.

Mr. Smith: Have you got one of the schdules?

Mr. McFall: Either he will have to get it right here—no doubt your counsel has one.

Mr. Smith: Mr. Corbin, the attorney, knows perhaps as much about it——

Mr. Corbin: No, I don't, I haven't seen it.

(Testimony of T. J. Smith.)

Mr. McFall: On the bottom there, the schedules show that only two items not included in the \$188,000 were \$1,000 for an open account against Agriculture Adjustment Administration and \$20,000 for breach of warranty against Arizona Equipment Sales he just mentioned.

Mr. Stevens: \$1,000 isn't there an offset on that?

Mr. McFall: He has written around that "Credit due petitioner is cancelled with credit on crop insurance."

Q. In connection with your indebtedness, you have taxes also here of \$16,766.44. What kind of taxes are those?

A. That was the withholding tax from the employees on these federal contracts.

Q. And that is in relation to your contracting business and has nothing to do with your farm?

A. No.

Mr. McFall: In order to avoid any misunderstanding there, that's an account—the Commissioner has consolidated these taxes, the state and county, he included in with the item you have in the amount of \$857.

Mr. Bilby: I knew it was a very small amount.

Mr. Smith: That item that you have just mentioned has been paid. This is a penalty they are raising on each entry.

Q. Well, that's the same item that they have a judgment against you in the United States District Court in Phoenix?

(Testimony of T. J. Smith.)

A. That's right. I presume that's what you are talking about.

Mr. Corbin: Mr. Bilby, may I explain that [57] to you, that \$15,000? There is only \$500 of it, some \$500, I think, that's the actual indebtedness, but the United States Government intervened and got a judgment and received the payment for the judgment, and the Commissioner of Internal Revenue wouldn't release the lien. It's a lien on the ranch because they filed it down there. But the Commissioner of Internal Revenue in Washington, D. C., said the state court had no jurisdiction.

Mr. McFall: The original tax grew out of withholding taxes for employees in the contracting business, that's what it is?

Mr. Smith: That's right.

Q. Now, I think you stated at the beginning of your examination by your own counsel here, that you are in error in listing Mr. White's indebtedness as \$24,850, and that should be a principal indebtedness of \$26,000 isn't that right?

A. That's right.

Q. Then there is an installment of interest which was due on the 16th of December, 1946, of \$435 and another installment due on the 16th of March, 1947, for \$435, isn't that right?

A. I don't think that interest is quite \$435.

Mr. Corbin: \$435?

A. (Answer continued) I think it was reduced to about—I don't have the exact amount.

(Testimony of T. J. Smith.)

Q. The Tucson Realty would have a record of that, wouldn't it? A. That's right.

Q. They gave me these figures and then \$475.60 insurance paid. A. Four hundred what?

Q. \$75.60. A. Something like that.

Q. Making a total of \$27,345.60. That sounds about right?

A. I would like to have an opportunity to check on that.

Q. Then you owed on that Tucson Realty some item of \$52? [58]

A. I listed that whole thing as five hundred some odd dollars.

Mr. McFall: \$528.16?

Mr. Smith: Yes.

A. (Answer continued) I didn't list it under White at all.

Mr. Bilby: Mr. White has the right to put it under the mortgage, Mr. Conciliator, and have it included in the lien which he has assumed.

Mr. McFall: Which he has assumed?

Mr. Bilby: Yes, I understand so.

Q. During the time that you were in the contracting business, who was running your farm?

A. I was running it.

Q. Did you have it leased?

A. One year I had it leased out to W. H. Lane.

Q. What year was that?

A. I believe it was in 1944.

Q. And did you have it leased in 1945?

A. Or 1943—I am not sure whether '43 or '44.

(Testimony of T. J. Smith.)

Q. During that year you didn't run it at all?

A. No.

Q. Did you have it leased the next year in 1945?

A. I farmed it in 1945, I believe it was.

Q. Do you have any lease agreement now in connection with it?

A. I have a proposed lease agreement.

Q. With whom?

A. With one Cecil Payne.

Q. Has he been running it?

A. No. He has done some work. There have been no agreements signed. [59]

Q. Your present condition of being unable to meet these obligations is because of obligations arising out of your contracting business, isn't it?

A. Because of certain liens, and I have all those financings to take care of everybody, pay off help, everybody else, put another well on the ranch to develop it, and this federal tax lien in there was the thing, one of the principal things that caused us to not be able to go ahead and refinance it.

Q. That all grows out of your contracting business? A. That's right.

Q. Do you have any other assets not listed in your petition? A. Yes.

Q. What are they?

A. One Model M farm tractor and four row cultivator. That's included in our rent agreements we had. We anticipated turning it to the court, the money.

(Testimony of T. J. Smith.)

Mr. McFall: What assets do you have now that aren't listed again that you just mentioned?

Mr. Smith: One Model M International farmer, and a four row cultivator.

Q. Any other assets not listed? A. No.

Q. You have any cash?

A. I have listed the cash.

Q. Not listed? A. No.

Q. Or any credits with any banks?

A. Any credits with any banks?

Q. Yes, or any bonds of any kind or securities, stocks? Answer so she can get it. A. No.

Q. None whatever? A. No. [60]

Q. Referring to this engine again, in your realty and title mortgage to Mr. White, I notice that you have listed one Airline pressure gauge together with Enterprise Corporation engine diesel type number 7199. Is that engine still on your place?

A. That's a compressor. I believe it's there.

Q. It's referred to as diesel type, as Enterprise Corporation engine diesel type number 7199. Is it still there? A. Yes, it is still there.

Q. Connected by Watson splicer to the Farrel Birmingham through gear head 240 horse power?

A. That's a mistake. The whole paragraph there is a mistake.

Q. You didn't have any such? A. Yes.

Q. What's the mistake?

A. It isn't described right. That's model—engine model number is DSL, this Enterprise. ♦

(Testimony of T. J. Smith.)

Q. What I am trying to get at, Mr. Smith, is this. You did mortgage an engine to Mr. White. That engine is there?

A. It has a broken trench. That was the reason for buying this engine from Allison.

Q. This diesel engine is not in operation now?

A. No.

Q. You didn't turn in any engine or other pump or equipment on the purchase of your Allison Steel engine? A. No, none whatever.

Q. Did you give to the Allison Steel Company a mortgage back on the engine you bought from them?

A. No. This Enterprise engine there, should be a new crank shaft put in it for insurance on the crop dusting. The same thing wouldn't happen again that happened last year, in 1946, be broken down—was very expensive.

Q. Were your contracting operations profitable?

A. They don't seem to have been very profitable. [61]

Q. You answer that as "no," is that it?

A. No, I don't answer that as "no" because they are not yet determined. Lawsuits are pending. If I am successful, it might be considered profitable. Until the lawsuits are determined, I wouldn't know.

Q. Well, did all of the money you had coming out of the contracting business involve in lawsuits, or did you make substantial sums before those lawsuits? A. I made money, I think.

Q. You lived off that money or did you save it?

A. I used it for development of various things.

(Testimony of T. J. Smith.)

Q. In the contracting business?

A. Not necessarily all in the contracting business.

Q. And for living?

A. Living, developing the farm, the ranch.

Q. The contracting business supported you for several years past or so?

A. No, contracting business hasn't fully supported me.

Q. Well, substantially so?

A. No more than the ranch did.

Q. At least partially so?

A. We made money out of tillage work. Yes, we made money out of farming.

Mr. Bilby: I think that's all. [62]

In the District Court of the United States for the
District of Arizona

No. B-525-Tucson

In the Matter of
T. J. SMITH, Debtor.

Hearing on adjourned meeting of creditors of T. J. Smith, Debtor, held at the Grand Jury Room of the United States District Court, Federal Building, Tucson, Arizona, on Tuesday, the 15th day of April, 1947, at two o'clock in the afternoon before C. R. McFall, Conciliation Commissioner.

The following were present:

John W. Corbin, Attorney for Debtor.

T. J. Smith, Debtor.

(Testimony of T. J. Smith.)

Mr. T. J. Smith, Debtor's Wife.

Ben C. Hill, Attorney representing Wid L. Coffin.

Ashby Lohse, Attorney representing Wid L. Coffin.

Ralph W. Bilby, of counsel for Knapp, Boyle, Bilby & Thompson, Attorneys for L. M. White.

Arthur Henderson, of counsel for Knapp, Boyle, Bilby & Thompson, Attorneys for L. M. White. [64]

Mr. McFall: I should like to ask the debtor one or two questions to clarify my own mind on this question.

Cross-Examination of

T. J. SMITH

Debtor

By Mr. McFall:

Q. Mr. Smith, I believe you testified the other day that you went into the contracting business in 1941 or '42? A. Yes.

Q. Could you give me approximately the date?

A. When I made that statement, I meant on these airports.

Q. When did you start that work?

A. May.

Q. May, 19—— A. 41—42, pardon me.

Q. That's what I thought, '42, and you were devoting all of your time to the contracting business from that time on, weren't you? A. No.

(Testimony of T. J. Smith.)

Q. Did you farm in May '42?

A. I supervised—yes, I farmed.

Q. What about '43? A. Yes.

Q. Well, when did you go out of the contracting business? A. In 1944, in September.

Q. In that interim there, did you have your farm leased out?

A. In 1944 I had it leased out.

Q. That is the only year? A. Yes.

Q. Were you share cropping it before then?

A. No, I had a foreman on the ranch and I supervised it. [65]

Q. You farmed in the year 1945?

A. Yes, sir.

Q. The whole year? A. Yes, sir.

Q. In 1946? A. That's right.

Mr. McFall: It seems to me, gentlemen, that this question, as Mr. Henderson suggests, is one of first impression, and the question is, in my opinion, whether one may incur an indebtedness in another operation to the extent here shown, and then by resuming his farming operations, claim the protection of the statute. I don't think that there is any question but what Mr. Smith is what we call a farmer. That is, I am not passing on that question, but I mean he has always been a farmer for a good many years. It is a legal question entirely as to whether one who engages in other activities and incurs an indebtedness to the extent shown here may, by resuming his farming operations, claim the protection of the Act. By that I simply mean,

(Testimony of T. J. Smith.)

he was a farmer at the time the petition was filed. I don't think there is any question about it, and was a year before that. My purpose is to state the facts as carefully as I can to the court for the purpose of the court to pass on this question if it comes up without any further testimony, and that is my present attitude on that question. That he was a farmer before. That he quit that business substantially for two or three years and then resumed it for two years before the petition was filed, and the debts and assets are all the result of the contracting business with very small exception. Now, if that entitles him to the protection—the court can pass on these facts. I think that would be a rather fair statement of the facts, and if it wants to hear more testimony, it can.

Mr. Corbin: I would like to make one suggestion there. With the exception of the fact that he quit farming for two or three years—he did not quit 'til 1944, whether the indebtedness was during 1941 and '42 and '43, if your Honor please, he did operate a ranch and operated it not on shares, but as a farmer.

Mr. Henderson: Mr. Commissioner, might we ask the debtor a question or two on that particular point?

Mr. McFall: Yes, I would like for you to do that.

Mr. Hill: May I ask a question or two of the petitioner? [66]

Mr. McFall: When Mr. Henderson is finished.

(Testimony of T. J. Smith.)

Mr. Hill: I beg your pardon?

Mr. McFall: As soon as Mr. Henderson is finished.

By Mr. Henderson:

Q. Mr. Smith, you referred to someone you had as a foreman during those years you were doing your contracting work. Who was that?

A. Mr. Hall.

Q. What's his full name?

A. Hall, Irving Hall.

Q. Is he now in the state?

A. I don't know where Mr. Hall is right now.

Q. What was his last address, if you have it?

A. Somewhere in New Mexico. I forgot the name of the place.

Q. What was your arrangement with him specifically? Did you employ him at so much per month or just what was your arrangement?

A. I paid him so much a day—so much a month.

Q. How much was that, do you remember?

A. I think something around \$200.

Mr. Corbin: How much?

Mr. Smith: \$200.

Mr. McFall: A month?

Mr. Smith: A month—50 a week.

Q. Was there anyone else who helped him with the supervision of the work on the farm except you?

A. My wife was there all the time—any question—most of the time I was there night and morning.

(Testimony of T. J. Smith.)

Q. And that was—excuse me.

A. I lived at the ranch all during the time that construction work was going on except the time it took to go back and forth. I was there lots of days, lots of weeks all days, [67] part of the week. I had a foreman. I superintended on the construction job. I was running this engineering.

Q. Then you leased in 1944, as I understand it?

A. I prepared it for him and got it ready to plant and he prepared it after it was ready.

Q. And then in 1945 you returned to the farm and began farming again?

A. In 1944, while I had leased it, I was doing some levelling, did some levelling on the ranch, taking in additional land. Well, he only leased 500 acres on the ranch. I did some additional work on the land, preparing, levelling and clearing.

Q. In 1945 you took over full control?

A. That's right.

Q. Did you have a foreman in 1945?

A. I still have one.

Q. Who was he?

A. His name is Valentine. I didn't pay him a large amount of money. He didn't know as much. But when we have to be away, like today, he looks after the place under my orders.

Q. And he is the only other one who is in charge besides yourself at the present time.

A. My wife has charge when I am not there.
Mr. Henderson: That's all.

Mr. McFall: Mr. Hill?

(Testimony of T. J. Smith.)

By Mr. Hill:

Q. I would like you to state, part of your activities in contracting was in connection with air fields at Douglas, Arizona, is that right?

A. Yes.

Q. And is it through that work over at Douglas that the great percentage of this indebtedness was incurred?

A. No—I can't—no, I can't agree with you on that.

Q. Well, you pulled off of that Douglas job along in February 1943, didn't you? [68]

A. Yes, that's right.

Q. Well, then, did you do any further contracting after that?

A. As I stated the other day, I done some tillage work.

Q. How is that?

A. I done tillage work. I put on a little tillage work until I sold the equipment in 1944, September, 1944.

Q. But is that tillage work—did you take a profit or loss on that tillage work?

A. I took a profit.

Q. You didn't lose any money on tillage. That was in the nature of generally of farming?

A. I beg your pardon?

Q. That was generally in the nature of farming, that tillage, for others?

A. That's right.

Q. Well, did you do any other general contracting after you pulled off the Douglas job, what-

(Testimony of T. J. Smith.)

ever it was, after this other man took over, did you do any other general contracting after that?

A. I done some hour work.

Q. Some what?

A. Work by the hour, by the week.

Q. What kind of work?

A. I worked on the railroad; I did some work for the Southern Pacific.

Q. Grading or——

A. No, just bulldoze work by the hour.

Q. Isn't it true that the largest part of the indebtedness listed here today grew out of the exclusive operation on the Douglas airport job?

A. Part of this indebtedness came about through a breakdown of an engine last year, \$10,000, where it had to be a new engine replaced.

Q. That was strictly farming?

A. And part of it, \$26,000, or, as a matter of fact, \$15,000 was federal withholding tax filed upon the ranch.

Q. For what, on the ranch?

A. Withholding tax.

Q. From the ranch?

A. Filed against the ranch, withholding tax on some of these contracts. So it's not all on the contracts. However, the majority was possibly on the contracts.

Q. What I am trying to bring out is that practically the majority of it come out of that one venture over at Douglas?

(Testimony of T. J. Smith.)

A. \$78,000 shows on Pinner, is a judgment—yes, a judgment against me growing out of the Douglas job.

Q. Well, now, before the Douglas job which you entered into in the fall of 1942, had you done any general contracting at that time?

A. I was at that time on contract at Jila Bend, an auxiliary field down there.

Q. Did it involve much money?

A. It involved \$360,000.

Q. Did you take a loss or profit?

A. It's never been settled. None of these contracts have been settled. So I can't say whether it's a loss or profit. It's all in litigation and it's disputed one way or the other. So I can't conceive of the idea yet, unless somebody knows more than I do, whether it's a loss or profit. I know it's embarrassing. I want to know where I am.

Q. Well, then, it can't be said definitely at this time that you have actually made any income out of the contracting business?

A. The best that I can say, it's been very embarrassing on this auxiliary—on this airport. I guess it depends on what you call contracting, what the definition of contracting is.

Q. All right, you go out and take a subcontract on this Douglas airport. Now, if you lost money on the whole on [70] these jobs, would you consider that you had an income from it?

A. As I just said, I am sorry—I just stated that that has not been determined. So, therefore, unless

(Testimony of T. J. Smith.)

you have more information than I do, I don't know whether I lost or made. It's in the courts for decision, whenever they decide it. I won't be able to give you an answer.

Q. So you don't know at this time whether you had any income from this business as a contractor or not, is that right?

A. I had a lot of income, but I understood the question as whether I made money or not.

Q. That's what I mean by income, whether you made any money on it.

A. That, I am unable to tell you until the courts decide the question.

Q. Now, then, as to your farming, have you made any money during this period of time since 1937, as a farmer; have you had any income from that?

A. Yes, sir.

Q. And from any other source, have you had any income? By income I mean profits on it.

A. Farming only. I want to clear it up. After I quit contracting, my income was solely earned from the farm since 1944, September, 1944.

Mr. Hill: If your Honor please, my questions aren't developed with any spirit of antagonism. I am simply trying to get in my own mind the situation as to whether or not he is a farmer, and whether or not his income has been—his only income appears to be materially from farming—whether or not he has had any income from the contracting business, seems to be an uncertain question at this time.

(Testimony of T. J. Smith.)

By Mr. McFall:

Q. (By Mr. McFall): Did you receive income—
I mean any profits from the farm during the years
that you were engaged in the contracting business?

A. Yes.

Q. How many acres did you have in the farm
in 1942 under cultivation? [71]

A. 1942? 500 acres.

Q. In 1943? A. 500 acres.

Q. In 1945? A. 400 acres.

Q. 1946?

A. Pardon me just a minute. 1945? It was 500
acres. 1946 was 400 acres. I made profit, I think,
in 1945 of about \$15,000. [72]

[Endorsed]: Filed June 2, 1947. [73]

[Title of District Court and Cause.]

ORDER DISMISSING DEBTOR'S PETITION

It appearing to the Court that petitioner T. J. Smith, in answer to show cause why petition should not be dismissed, failed to show cause why the petition should not be dismissed on the grounds and for the reason he is not a farmer within the meaning of Section 75 of the Bankruptcy Act,

It Is, Therefore, Hereby Ordered that the petition be and the same is hereby dismissed.

Wednesday, June 4, 1947. [74]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that T. J. Smith, the petitioning debtor above named, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from the order made and entered on the 4th day of June, 1947, dismissing debtor's petition, and from the whole thereof.

CORBIN & ORME,
By JOHN W. CORBIN,
Attorneys for T. J. Smith,
Debtor.

[Endorsed]: Filed July 2, 1947. [75]

[Title of District Court and Cause.]

APPEAL BOND AND RECEIPT

Comes now Corbin & Orme and deposits with the Clerk the sum of Two Hundred Fifty Dollars (\$250.00) in cash, lawful money of the United States of America, as a cash bond on appeal.

CORBIN & ORME,
By JOHN W. CORBIN,
Attorney for Debtor.

RECEIPT

This is to certify that the Clerk of the District Court of the United States, District of Arizona, Tucson Division, has received the foregoing sum of Two Hundred Fifty Dollars (\$250.00) in cash as an appeal bond in the foregoing styled and numbered cause.

WM. H. LOVELESS,
Clerk.

By /s/ CATHERINE A. DOUGHERTY,
Chief Deputy.

[Endorsed]: Filed July 28, 1947. [76]

[Title of District Court and Cause.]

DESIGNATION OF PORTION OF RECORD,
PROCEEDINGS AND EVIDENCE TO BE
CONTAINED IN THE RECORD ON AP-
PEAL TO THE CIRCUIT COURT OF
APPEALS

To the Clerk of the above entitled court and to Knapp, Boyle, Bilby and Thompson, attorneys for the creditor, L. M. White, and all other interested parties:

You, and Each of You, are hereby notified that the bankrupt, T. J. Smith, having appealed to the United States Circuit Court of Appeals for the Ninth Circuit, in the above entitled cause, desig-

nates the following portion of record, proceedings and evidence to be contained in the record on appeal and to be transmitted to the United States Circuit Court of Appeals for the Ninth Circuit, by the Clerk of the above district court:

1. Debtor's Petition in Proceedings under Section 75 of the Bankruptcy Act;
2. Notice of First Meeting of Creditors, together with the Summary of Inventory, Statement of Indebtedness and List of Creditors;
3. Notice of Adjourned Meeting of Creditors, dated April 9, 1947;
4. Final Inventory filed on the 15th day of April, 1947;
5. Report and Certificate to the Judge; [77]
6. Order to Show Cause made and entered by the Court on April 22, 1947;
7. Order of Dismissal entered and filed on the 4th day of June, 1947;
8. Notice of Appeal;
9. Bond on Appeal;
10. Reporter's Transcript of testimony taken at the hearing on the order to show cause on the 14th day of May, 1947;
11. This designation.

CORBIN & ORME,
By JOHN W. CORBIN,

Attorneys for T. J. Smith.

[Endorsed]: Filed July 28, 1947. [78]

[Title of District Court and Cause.]

CREDITOR'S DESIGNATION OF PORTION
OF RECORD, PROCEEDINGS AND EVIDENCE
TO BE CONTAINED IN THE
RECORD ON APPEAL TO THE CIRCUIT
COURT OF APPEALS

To the Clerk of the above entitled Court, and to
attorneys for the Debtor and all other inter-
ested parties:

You and Each of you are hereby notified that
the Creditor L. M. White, by and through his attor-
neys, hereby designates the following portion of
record, proceedings and evidence to be contained
in the record on appeal to be transmitted to the
United States Circuit Court of Appeals for the
Ninth Circuit by the Clerk of the above Court,
to wit:

1. Memorandum filed on behalf of L. M. White
by his attorneys on or about June 2, 1947, to-
gether with all transcripts and certified copy
attached thereto.
2. Certified six page report of proceedings of
C. R. McFall, Conciliation Commissioner.

KNAPP, BOYLE, BILBY &
THOMPSON,

ARTHUR HENDERSON,

Attorneys for L. M. White,
Creditor.

Copy of the foregoing mailed to Corbin & Orme,
220 Industrial Building, Phoenix, Arizona, Attor-
neys for Debtor, August 7th, 1947.

[Endorsed]: Filed Aug. 7, 1947. [79]

[Title of District Court and Cause.]

ORDER EXTENDING TIME TO FILE RECORD ON APPEAL AND DOCKET ACTION

It Is Ordered that the time of the debtor herein within which to file the Record on Appeal and docket this action in the United States Circuit Court of Appeals for the Ninth Circuit be and it is extended for a period of twenty days. [80]

Tuesday, August 5, 1947.

In the District Court of the United States for
the District of Arizona

CLERK'S CERTIFICATE
TO TRANSCRIPT OF RECORD

I, William H. Loveless, Clerk of the United States District Court for the District of Arizona, do hereby certify that I am the custodian of the records, papers, and files of said Court, including the records, papers and files in the matter of T. J. Smith, Debtor, numbered B-525-Tucson, on the docket of said Court.

I further certify that the attached pages, numbered 1 to 80, inclusive, contain a full, true and correct transcript of all the proceedings had in said matter and of all the papers filed therein, together with the endorsements on filing thereon, called for and designated in Debtor's Designation, and in Creditors' Designation, of Portion of Record, Proceedings and Evidence to be Contained in the Record on Appeal, filed in said matter and made a part of the transcript attached hereto, as the same

appear from the originals thereof remaining on file in my office as such clerk of the state and district aforesaid.

I further certify that the duplicate of the reporter's transcript filed in said matter is transmitted herewith and made a part of the record on appeal herein.

I further certify that the Clerk's fee for preparing and certifying this record on appeal amounts to the sum of \$11.00 and that said sum has been paid to me by counsel for the appellant.

Witness my hand and the seal of said Court this 19th day of August, 1947.

[Seal] /s/ WM. H. LOVELESS,
Clerk. [81]

In the District Court of the United States for
the District of Arizona

No. B-525

In the Matter of
T. J. SMITH, Debtor.

ORDER TO SHOW CAUSE

The above entitled and numbered cause came on duly and regularly to be heard in the above entitled court, before Hon. Howard C. Speakman, United States District Judge, presiding without a jury, commencing at the hour of 10:00 o'clock, a.m., May 14, 1947, at Tucson, Pima County, Arizona.

The debtor was represented by his attorney, Mr. John Corbin.

Mr. Ben C. Hill represented one of the listed

creditors, one Kaufman & Ashby Laske.

Both sides having announced ready, the following proceedings were had:

The Court: Any other creditors represented here this morning?

(No response.)

The Court: All right. There is an order to show cause here. Let's proceed.

Mr. Corbin: Do I understand we are to offer evidence as to the matter here before the Court?

The Court: This matter arose in a hearing heard [1*] before the Conciliation Commissioner. Some creditor named White, and there arose a question of the jurisdiction of the Court in that he questioned this petitioner being a farmer within the meaning of the Section, and that was reported to the Court, and this order to show cause was issued on that.

Mr. Corbin: At the time the hearing was had, your Honor, I think the Commissioner took evidence that is in no way before the Court. We have to put that evidence on?

The Court: That is right.

Mr. Corbin: We have seen no objection filed by any creditor. If the creditor White raised the question, he did it by—that is verbally, so far as I know, but we are ready to proceed and put the evidence on.

The Court: Very well.

(Thereupon witnesses were called and duly sworn by the Clerk.)

* Page numbering appearing at top of page of original Reporter's Transcript of Record.

T. J. SMITH

was called as a witness in his own behalf, and being first duly sworn, testified as follows:

Direct Examination

By Mr. Corbin:

Q. Will you state your name, please? [2]

A. T. J. Smith.

Q. You are the petitioner here in this matter this morning?

A. I am.

Q. Where do you live, Mr. Smith?

A. Marana, west about five miles, on a ranch.

Q. What is your business or occupation?

A. Farmer.

Q. How long have you been a farmer?

A. All my life.

Q. How long have you lived at Marana?

A. Since 1920, except two years I had a ranch in Phoenix.

Q. What years were those?

A. '36 and '37, part of '37.

Q. What holdings have you?

A. Marana, I have 1280 acres, all farm land.

Q. Do you farm that? A. Yes, sir.

Q. What part of it is irrigated?

A. There has been about 800 acres irrigated.

Q. How do you irrigate?

A. From a well, Diesel engine driven.

The Court: A little louder, please.

The Witness: A. It is irrigated by a well, Diesel driven pump. [3]

(Testimony of T. J. Smith.)

Q. (By Mr. Corbin): What size engine?

A. There are two engines on the place now, the original one was 165 horse power and last August we broke the crankshaft and I purchased another engine.

Q. There are not two pumping plants?

A. No.

Q. How much water are you pumping there?

A. We pumped at that time 3000 gallons per minute. However, if we had more power we could pump more.

Q. How much will that irrigate?

A. About 500 acres of cotton.

Q. When did you acquire this ranch?

A. I homesteaded this ranch, first in about '32 or '3, one section, and later on I bought a section from the State.

Q. You homesteaded a section of the land and got title from the Government?

A. That is right.

Q. And held it ever since?

A. Yes, sir.

Q. Have you constantly farmed that place yourself?

A. Since I cleared it and leveled it, except one year I rented it to W. H. Lane. [4]

Q. During the last year did you farm that place?

A. Yes, sir.

Q. What did you farm?

A. Cotton and grain, hegari.

(Testimony of T. J. Smith.)

The Court: Pardon me, what year did you rent it?

The Witness: 1944.

Q. (By Mr. Corbin): Mr. Smith, you lived on the place?

A. I lived on the ranch ever since 1936-37.

Q. You are married? A. Yes, sir.

Q. And Mrs. Smith lives with you?

A. Yes, sir.

Q. You have maintained your home at the place all the time?

A. That is right.

Q. Have you in the last—in the past maintained memberships in farm organization?

A. That is right.

Q. In what organization?

A. In the Triple A and Soil Conservation.

Q. And you have received the benefits from those programs as offered by the United States Government?

A. Yes, sir.

Q. Have you maintained Government insurance on [5] the crops that you have raised there?

A. I have.

Q. You have insurance benefits now on that?

A. I have insurance this year, and I am farming it at the present time.

Q. And you have farmed some of it?

A. I have prepared quite a bit, but I have not planted anything yet.

(Testimony of T. J. Smith.)

Q. And the reason you have not planted it is because of your financial difficulties?

A. That is right.

Mr. Corbin: I believe that is all, your Honor.

The Court: Do you care to examine him?

Mr. Hill: No, no questions.

The Court: Mr. Smith, you know the purpose of this hearing? A. Yes, sir.

Q. To determine whether or not you are farmer?

A. Yes, sir.

Q. You understand the proceedings you started apply to farmers only?

A. That is right.

Q. And if you are not a farmer you are not entitled to the benefits of this law under which you are proceeding. You understand that?

A. Yes, sir.

Q. I want to ask a few questions. I noticed listed here in Schedule A-3, for instance, a number of creditors. What is Tregaskes and Godell, \$600, and the note for merchandise, 1946, is that correct?

A. Yes, sir.

Q. What was that merchandise?

A. It was for paint, painting the buildings on the ranch.

Q. Arizona Fertilizer Company, in 1946, \$1633.47?

A. That was for dusting furnished for the cotton.

Q. That went on the ranch?

A. Yes, sir.

(Testimony of T. J. Smith.)

Q. Airplanes for dusting?

A. That is right.

Q. Tucson Realty & Trust Company, three years insurance policy. What is that?

A. On the builings and the contents of it which would be the pump and plant and household furnishings.

Q. That went to the ranch?

A. That is right.

Q. Allison Steel Company.

A. That is the engine I bought last August when the other one broke down. [7]

Q. That is the one you are operating on the ranch at this time? A. That is right.

Q. Shell Chemical Company?

A. That was for fertilizer. We done some experimneting on the cotton last year.

Q. Allen Perry, attorney, \$3796.47.

A. That is attorney's fees.

Q. These attorney's fees? A. Yes, sir.

Q. That was for the trial of a case in Phoenix?

A. That is right.

Q. That case involved some contracting?

A. That is right, sub-contracting.

Q. War contracting? A. That is right.

Q. Dirt movement? A. That is right.

Q. That was in the construction of the Marana Airfield? A. Yes, sir.

Q. Then that was not involved in farming?

A. No, sir.

(Testimony of T. J. Smith.)

Q. The next one, judgment in favor of Warren M. and Louis N. Tenney, that is \$10,000. Did that, was that involved in your farming operations?

A. No, that grew out of those Government contracts.

Q. That was in your contracting business?

A. Yes, sir.

Q. Judgment in favor of the City of Phoenix in the amount of \$2500, with interest. That is in the sum of \$2500. What is that for?

A. That is materials furnished for Smith & Tenney, 50 per cent of that should have been taken care of by Tenney.

Q. Was that contracting or farming?

A. Contracting.

Q. That was secured back in 1943?

A. That is right.

Q. The next item is judgment in favor of Phelps Dodge for merchandise, 1942-1943.

A. That is in the same status.

Q. Contracting? A. That is right.

Q. What was that merchandise?

A. I think that was for tires they got for one of the trucks they had on the job.

Q. Judgment in favor of Arthur Pinner, October, 1946, for the sum of \$78,562.07, plus interest. What was that judgment for?

A. That was on a contract personally, and he was supposed to do certain things on these jobs and out of those amounts would have been approximately that amount. That is the way they figured it.

(Testimony of T. J. Smith.)

Q. That does not involve farming?

A. No.

Q. Now, the claim of Bealey Trucking Company.

A. That is contracting. That is a disputed claim.

Q. Now, the claim of Jennings, Strouss & Trask.

A. That was legal expenses for the Smith-Tenney Construction claim. That is disputed.

Q. That pertains to contracting?

A. Yes, sir.

Q. Does not involve your farming operations?

A. No.

Q. Now, Mr. Smith, in what years were you engaged in contracting?

A. Well, I was in 1943, the latter part of '42, and part of '43. That was, let's see, in August of 1942, until February of 1943, I had a contract and the man ran each contract for me. I was simply financing and furnishing the equipment.

Q. Well, now, this indebtedness occurred as a result of your contracting; as I understand, [10] you have included that in your indebtedness as a farmer.

A. I included it, I don't know how he set it up, Judge. Mr. Burk was handling it. I don't know how he set it up.

Q. Well, go over to Schedule B-3. Here is a judgment in favor of Smith against Arthur Pinner for \$32,002. Is that the result of farming operations or contracting?

A. No, that is the same, contracting.

(Testimony of T. J. Smith.)

Q. The next item is \$12,964 taken by Arthur Pinner, Jr., and applied on the judgment set forth in his favor. What was that, farming or contracting?

A. That was contracting. That was from the Marana job.

Q. The claim of T. J. Smith versus Arthur Pinner and Federal Guarantee Company for \$123,230.28. Is that the result of farming or contracting?

A. That is contracting. There must be some mistake on that. If that is the total figure, Judge.

Q. Well, the next one, claim of breach of warranty unliquidated to the Arizona Equipment & Sales Company of Phoenix for \$20,000. What is that, farming or contracting? [11]

A. That is farming.

Q. Well, go back to Schedules A and B, statement of debtors. First one is wages, \$215.

A. That is Mike Brady. That is in regard to those contracts.

Q. That is contracts? A. Yes.

Q. Now, taxes?

A. That is on the ranch. Pardon me, I don't know, there may be more.

Q. Taxes due the United States, \$15,909.44.

A. That grew out of those contracts.

Q. Income tax, I presume?

A. That was withholding taxes. Tenney and Pinner were running the job. Tenney was getting a percentage to run the job, and that was that with-

(Testimony of T. J. Smith.)

holding tax we had accumulated there, but he didn't turn it in and pay it to the Government.'

Q. Then the Government has that much of a claim against you as a result of contracting?

A. I think that was settled under Court order, and I think the difference was a penalty of some few hundred dollars, and the judgment was never released on account of the penalty being filed. I think everything but 500 or a thousand dollars.

Q. Next, taxes due districts and municipalities, \$800. [12] A. That was on the ranch.

Q. Going on down, Schedule A, on the same page, I have an item here: Machinery fixtures and tools of \$35,000. What is that?

A. That is equipment on the ranch.

Q. Does that include any road equipment?

A. No.

Q. That is just farm equipment?

A. That is all.

Q. All right, go to Schedule A, first item here is C. M. Brady, Phoenix, 1946, undisputed, \$215.

A. That is the same one we mentioned awhile ago.

Q. Contracting?

A. Yes. That is the same item of labor mentioned a few minutes ago.

Q. What was he, foreman or something?

A. No, he was an engineer man.

Q. I see. Schedule 2 seems to be a mortgage to L. M. White in the sum of \$23,887.

A. That is the mortgage on the ranch.

(Testimony of T. J. Smith.)

Q. That was made when?

A. In 1930. No, I believe it was in 1942 or 1943. I don't remember the exact, exactly when. It is '42 or '43. I believe in 1943, March, 1943.

Q. That was for what; what was the purpose of the correction of that date?

A. I had a mortgage on it already. When I developed the ranch and put in this equipment, I borrowed some money, and the man I had borrowed from was an eastern man, and he was wanting to close out everything in Arizona, and he asked me if I could refinance as he was getting old. A man named Eckert, and I told him I would try to find somebody, and got it from Mr. White.

Q. Anyway, that was not involved in the contracting, it was on the ranch?

A. That is right.

Q. Is there anything listed, Mr. Smith, in any of these schedules covering any machinery or equipment that you used in your contracting business?

A. No. No, sir, none whatever.

The Court: I believe that is all.

Mr. Corbin: May I ask a few questions?

The Court: Go ahead.

Q. (By Mr. Corbin): Mr. Smith, at any time that these contracts were active, were you in charge of them or of the work?

A. I hired the men to take care of all the [14] contracting work.

Q. Were you with them all the time?

(Testimony of T. J. Smith.)

A. No, I was at the ranch. I was about once or twice a week though, whatever time I could get away to check with the foreman on the contracting jobs.

Q. Mr. Smith, during the last year you farmed this place, how much, rather, you had any crops in there last year? A. Yes.

Q. What did you have; what acreage?

A. Approximately 500 acres.

Q. What? A. Approximately 500 acres.

Q. What crop did you have on it?

A. 200 acres of cotton and 300 acres of hegari, grain.

Mr. Corbin: That is all, your Honor.

Q. (By Mr. Hill): Mr. Smith, prior to 1942 did the result of your activities on the farm bring you any profits? A. How is that?

Q. Prior to 1942 did you make any money out of your farm activities? A. Yes.

Q. How much money have you made prior to 1942 [15] out of your farm out at Marana?

A. I couldn't tell you offhand, I would have to look it up, have the bookkeeper look it up.

Q. Was it considerable?

A. Yes, we made money.

Q. You spoke about your contracts, that you did the financing and others did the actual work, where did the money come from you used in financing the contracts?

A. We made arrangements with the First National Bank to finance the contracts.

(Testimony of T. J. Smith.)

Q. Did you use any of the money you earned on the farm on these contracts? A. No.

Q. During the period 1942 and 1943 you were in actual management of your farm?

A. 1942 and '43?

Q. Yes. A. Yes.

Mr. Hill: That is all, your Honor.

The Court: This contracting, Mr. Smith, that was principally leveling and dirt moving?

A. Yes. I would like to make an explanation. I had this equipment in 1942 when the war broke out, and that heavy equipment was really for the farm, and when they started these bases, the [16] Government told me, I believe Joe Trapp, they needed that equipment, and either to go to work or put on the ground to help the Government. I said I would rather not sell it, but if I can arrange where it could work, I would rather do that, and he told me there were two ways to do for helping out the Government, and to do what I could to help; rent it to the Government or some contracting company, or hire a foreman and subcontract with some of the principal contractors and there were several men suggested who would make good foremen, and that is what I did.

The Court: Is that all?

Mr. Corbin: Yes.

Mr. Hill: That is all.

The Court: Very well. That is all. Anything further?

Mr. Corbin: I think we have nothing further, your Honor.

The Court: Well, Mr. Corbin, I haven't figured this out, but it appears just generally here that most of this indebtedness is the result of contracting. Now, can a farmer deviate from his farming and go far afield and create indebtedness and come back and tack it on his farm and take advantage of this Act? [17]

Mr. Corbin: I think there is no question about that, your Honor. I think the cases hold the test of the matter is at the time of the filing of the petition, if the farmer is a farmer at that time he is entitled to the benefits of the Act. I think that the cases hold that the source of the indebtedness makes no difference, and we would like to cite or call to your Honor's attention to those cases. Do you want to hear from me on this?

The Court: I haven't looked it up to any extent in particular. It rather seems to me under this Section it applies only to destitute farmers. It applies only to farmers.

Mr. Corbin: The Statute is that a farmer is one who is engaged in the tilling of the soil, and so forth alone, not where his debts come from.

The Court: All right, and to go on, the principal part of whose income is derived from one or more of the following operations. The majority of his income must be derived from his farm here. Doesn't it follow that the majority of his debts must also come from the farm?

Mr. Corbin: That don't seem to be the theory of the cases.

The Court: Well, I will tell you what I suggest; suppose you file a memorandum or brief, or whatever you want to call it. I am of the opinion without going into it that this indebtedness must result from farming operations and if the amount of the indebtedness set up in these schedules was created as a result of contracting, I doubt if he comes within this Section. I will be frank with you. You may be able to change my mind by submitting proper authorities.

Mr. Corbin: May I say I shared your ideas entirely on that until I looked into some of these cases, and I think we have plenty of law, and I would be glad to submit this brief.

The Court: Very well. Do you gentlemen want to submit anything?

Mr. Hill: No, your Honor.

Mr. Corbin: Within what time?

The Court: What time do you want?

Mr. Corbin: Well, I will ask for a week or ten days.

The Court: I will give you twenty if you want it.

Mr. Corbin: No, I will get it in ten days.

The Court: All right. The matter will be taken under advisement. [19]

I hereby certify that the proceedings had upon the motion to show cause in the within entitled

cause are contained fully and accurately in the shorthand record made by me thereof, and that the foregoing 19 typewritten pages constitute a full, true and accurate transcript of said shorthand record.

/s/ W. J. McGUINNESS,
Official Reporter.

[Endorsed]: Filed July 28, 1947.

[Endorsed]: No. 11712. United States Circuit Court of Appeals for the Ninth Circuit. T. J. Smith, Appellant, vs. L. M. White, et al., Appellees. Transcript of Record. Upon Appeal from the District Court of the United States for the District of Arizona.

Filed August 23, 1947.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 11712

T. J. SMITH,

Appellant,

vs.

L. M. WHITE,

Appellee.

APPELLANT'S STATEMENT OF POINTS
UNDER RULE 19(6) AND DESIGNATION
OF RECORD FOR PRINTING

The following is the point relied upon by the appellant upon the above appeal:

The District Court erred in dismissing the debtor's petition, and in dismissing the proceeding, because, under all of the evidence, and the law thereunto applicable, the debtor is a "farmer" within the meaning and intent of Section 75 of the Act of Congress relating to bankruptcy, as amended, and as such is entitled to relief under said Act.

Appellant hereby designates the entire transcript for printing.

CORBIN & ORME,

By /s/ JOHN W. CORBIN,

Attorneys for Appellant,

220 Industrial Building,

Phoenix, Arizona.

State of Arizona,
County of Maricopa—ss.

On the 2nd day of September, 1947, I transmitted by United States mail, postage prepaid, a true and correct copy of the foregoing document to counsel for appellee, viz. Knapp, Boyle, Bilby & Thompson, Valley Bank Building, Tucson, Arizona.

/s/ JOHN W. CORBIN.

Subscribed and sworn to before me this 2nd day of September, 1947.

[Seal] /s/ LIN ORME, JR.,
Notary Public.

My commission expires Feb. 17, 1950.

[Endorsed]: Filed Sept. 3, 1947.

